

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

2010



Leadership is a behavior, not a position

**Kentucky General Assembly
New Statutes
(unofficial)**



John W. Bizzack, Ph.D.
Commissioner





The Leadership Institute Branch of the Department of Criminal Justice Training offers a Web-based service to address questions concerning legal issues in law enforcement. Questions can now be sent via e-mail to the Legal Training Section at

docjt.legal@ky.gov

Questions concerning changes in statutes, current case laws and general legal issues concerning law enforcement agencies and/or their officers acting in official capacity will be addressed by the Legal Training Section.

Questions concerning the Kentucky Law Enforcement Council policies and KLEFPF will be forwarded to the DOCJT General Counsel for consideration.

Questions received will be answered in approximately two or three business days.

Please include in the query your name, rank, agency and a daytime phone number in case the assigned attorney needs clarification on the issues to be addressed.



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NOTE:

General Information concerning the Department of Criminal Justice Training may be found at <http://docjt.ky.gov>. Agency publications may be found at <http://docjt.ky.gov/publications.asp>.

In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docjt.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

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NOTE

This is an unofficial compilation for informational purposes only.

For official versions of the Kentucky Revised Statutes, please go to www.lrc.ky.gov

2010 KENTUCKY General Assembly

EFFECTIVE DATE OF NEW STATUTES IS

July 15, 2010

EMERGENCY LEGISLATION IS EFFECTIVE IMMEDIATELY

NOTE: To reduce length and redundancy, some of these statutes have been edited.

SENATE

SENATE BILL 17 - Penal Code – Rape and Related Offenses

Section 1. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
 - (a) He engages in sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;
 - (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
 - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; ~~or~~
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position; **or**
 - (e) **Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.**
- (2) Rape in the third degree is a Class D felony.

Section 2. KRS 510.090 is amended to read as follows:

- (1) A person is guilty of sodomy in the third degree when:
 - (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;

(b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or

(c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; ~~or~~

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position; **or**

(e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.

(2) Sodomy in the third degree is a Class D felony.

Section 3. KRS 510.120 is amended to read as follows:

(1) A person is guilty of sexual abuse in the second degree when:

(a) He or she subjects another person to sexual contact who is incapable of consent because he or she is mentally retarded;

(b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or

(c) Being **a jailer, or** an employee, contractor, vendor, or volunteer of the Department of Corrections, **Department of Juvenile Justice,** or a detention facility as defined in KRS 520.010, or of an entity under contract with either ~~the~~ department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects **a person who is at least eighteen (18) years old and** ~~an offender~~ who **he or she knows** is incarcerated, supervised, evaluated, or treated by the Department of Corrections, **Department of Juvenile Justice,** ~~the~~ detention facility, or ~~the~~ contracting entity, to sexual contact. ~~[In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he or she engaged in the conduct constituting the offense, he or she and the offender were married to each other.]~~

(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than five (5) years older than the other person.

(3) Sexual abuse in the second degree is a Class A misdemeanor.

SENATE BILL 32 – Inmate Legal Actions

Section 1. KRS 454.400 is amended to read as follows:

As used in KRS 454.405 to 454.415~~[and 454.440]~~, "inmate" means any person confined in either a state or federally operated facility, a county jail or other facility of local government, or in a private facility under contract with the Department of Corrections.

Section 2. KRS 454.405 is amended to read as follows:

- (1) At any time, and upon its own motion or on motion of a party, a court may dismiss a civil action brought by an inmate or on behalf of an inmate if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous. In addition to any other available disposition, a court may dismiss the civil action if satisfied that the affidavit of poverty in support of a request to proceed in forma pauperis is wholly or partly false or misleading.
- (2) This section does not apply to criminal or collateral criminal proceedings.
- (3) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate and to all persons named as a party defendant in the action~~[county attorney of the county where the action was filed]~~.
- (4) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section may include as part of its order an assessment of fines and costs against the inmate as the court may deem reasonable and prudent. The Department of Corrections, county jail, or other local or regional correctional facility may enforce this assessment against the inmate's canteen~~[prison]~~ account and against any other assets of the inmate through any other mechanism provided by law.
- (5) No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.

Section 3. KRS 454.415 is amended to read as follows:

- (1) No action shall be brought by or on behalf of an inmate, with respect to:
 - (a) An inmate~~[a prison]~~ disciplinary proceeding;~~[or]~~
 - (b) Challenges to a sentence calculation;~~[or]~~
 - (c) Challenges to custody credit;~~or [to prison]~~
 - (d) A conditions of confinement issue~~[or]~~until administrative remedies as set forth in ~~the~~the Department of Corrections policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted.
- (2) Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.
- (3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.
- (4) A court shall dismiss a civil action brought by an inmate for any of the

reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies, and may include as part of its order an assessment of court costs against the inmate as the court may deem reasonable and prudent. The correctional facility may enforce this assessment against the inmate's canteen account and against any other assets of the inmate through any other mechanism provided by law.

(5) A court which dismisses a civil action brought by an inmate for the reasons set out in this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate, to all persons named as a party defendant in the action, and also, by certified mail, return receipt requested, to the inmate.

(6) The period of limitations applicable to the cause of action after it has been dismissed by a court under this section for failure to exhaust administrative remedies is the period fixed by the applicable statute or ninety (90) days following the exhaustion of administrative remedies if the grievance is filed within the applicable period of limitations, whichever is later. Nothing in this subsection shall be construed to revive a cause of action that is barred by the applicable period of limitations.

SENATE BILL 64 – Fish & Wildlife

SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

KRS 150.152 Report of audit of department by Auditor of Public Accounts.
Each year when the Auditor of Public Accounts conducts the statewide single audit of the Commonwealth of Kentucky, the Auditor of Public Accounts shall with respect to the Department of Fish and Wildlife Resources:

- (1) Examine the separate revenue streams of each account within the game and fish fund to ensure compliance with the prohibition against commingling of funds;**
- (2) Disaggregate and report the revenue and expenditures, by type, within the program income fund of the fish and game fund;**
- (3) Identify internal controls, weaknesses, operating inefficiencies, and make recommendations for improvements; and**
- (4) Submit a written report to the Interim Joint Committee on Natural Resources and Environment in conjunction with the release of the statewide single audit of the Commonwealth of Kentucky.**

SECTION 2. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

KRS 150.361 Taking game with a firearm during bow season prohibited.

- (1) Except as provided in this section, no person shall knowingly take game with a firearm during bow season.**
- (2) This section shall not apply to a person who:**
 - (a) Uses a firearm permitted by law to take game permitted by law to be taken**

during bow season; or

(b) Kills, attempts to kill, wounds, or attempts to wound an animal in self-defense, in defense of another person, or in defense of property, or as provided in KRS 150.172.

SECTION 3. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

KRS 150.172 Possession and use of firearm for self-defense and defense of others while hunting or trapping - Exceptions - Administrative regulations.

(1) Any person who is not prohibited by state or federal law from possessing a firearm may carry a firearm and ammunition for that firearm for purposes of self-defense and defense of others while hunting, fishing, trapping, or engaging in any other activity not constituting a crime under KRS Chapter 218A or Chapters 500 to 534, and may do so on any public lands under the control of the department and on any private land under the control of the department, unless the owner of the private land has posted notice that concealed deadly weapons are not allowed in a building where they may be prohibited pursuant to KRS 237.110 or 237.115.

(2) (a) A person may use a firearm, if he or she is not prohibited by state or federal law from possessing a firearm, or may use any other deadly weapon, at any time and during any season to:

1. Kill or attempt to kill an animal, whether protected or unprotected, in self-defense or defense of another person; or

2. Kill or attempt to kill an injured animal for humane purposes.

(b) An arrest shall not be made, except upon a warrant issued by a judge of a court of competent jurisdiction, and a citation shall not be issued by a peace officer if an animal is killed under circumstances described in paragraph (a) of this subsection.

(c) A citation may be issued by a peace officer who witnesses the killing of an animal in violation of a statute or federal regulation under circumstances different from those described in paragraph (a) of this subsection.

(d) An arrest warrant or a summons may be issued by a judge of a court of competent jurisdiction, upon application of the appropriate county attorney, if the court believes that there is sufficient cause to doubt the claim that the animal was killed under circumstances described in paragraph (a) of this subsection.

(3) In cases where an animal is killed and there is a claim that the animal was killed under circumstances described in paragraph (a) of subsection (2) of this section, the department shall provide forensic evidence or other competent evidence as to how the animal was killed and the circumstances surrounding the event.

(4) The department shall not promulgate administrative regulations restricting any right provided by this section or the spirit thereof.

(5) This section shall not apply to the killing, wounding, or other prohibited act relating to specific wildlife which are protected by the federal Endangered Species Act, 16 U.S.C. secs. 1531 to 1544; federal Migratory Bird Treaty Act, 16 U.S.C. secs. 703 to 712; or federal Bald and Golden Eagle Protection Act, 16

U.S.C. secs. 668 to 668d.

(6) The principles contained in KRS Chapter 503 relating to the use of force and deadly force against human beings shall apply to acts where wildlife is involved.

SECTION 4. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

KRS 150.0241 Access to and use of commission-managed lands for hunting - Duties of commission and other state agencies - Reports.

(1) As used in this section unless the context otherwise requires:

(a) "Commission" has the same meaning as in KRS 150.010;

(b) "Commission-managed lands" means those lands owned by the commission, those lands owned by the Commonwealth over which the commission holds management authority, or those privately owned lands that are leased or managed by the commission; and

(c) "Hunting" means the lawful pursuit, trapping, shooting, capture, collection, or killing of wildlife or the lawful attempt to do the same.

(2) Commission-managed lands shall be open to access and use for hunting except as limited by the commission for reasons of fish or wildlife management, or as otherwise limited by a statute outside KRS Chapter 150 or 235.

(3) The commission, in exercising its authority under the Constitution of the Commonwealth of Kentucky and statutes, shall exercise its authority consistent with subsection (2) of this section, in a manner that supports, promotes, and enhances hunting opportunities to the extent authorized by law.

(4) Commission land management decisions and actions, including decisions made by private owners to close land managed by the commission, shall not result in any net loss of habitat land acreage available for hunting opportunities on commission-managed lands that exists on July 15, 2010. The commission shall expeditiously find replacement acreage for hunting to compensate for closures of any existing hunting land. Replacement lands shall, to the greatest extent possible, be located within the same wildlife district and shall be consistent with the hunting discipline that the commission allowed on the closed land.

(5) Any state agency that owns or manages lands shall assist and coordinate and cooperate with the commission to allow hunting on these lands if the lands are determined by the commission and that agency to be suitable for hunting. To ensure no net loss of land acreage available for hunting, state agencies shall cooperate with the commission to open new, additional hunting lands to replace lost hunting acreage. Lands officially designated as units within the state park system may be considered for replacement hunting lands and may be open for hunting when necessary as a wildlife control or management tool as determined by the Department of Parks.

(6) By October 1 of each year, the commissioner shall submit to the Legislative Research Commission and the Interim Joint Committee on Natural Resources and Environment a written report describing:

(a) The acreage managed by the commission that was closed to hunting

during the previous fiscal year and the reasons for the closures; and

(b) The acreage managed by the commission that was opened to hunting to compensate for closures of existing land pursuant to subsection (4) of this section.

(7) By October 1 of each year, any state agency that owns or manages lands shall submit a written report to the commission, the Legislative Research Commission, and the Interim Joint Committee on Natural Resources and Environment describing:

(a) A list of properties that were open for hunting during the previous fiscal year;

(b) A list of properties that were not open for hunting during the previous fiscal year; and

(c) 1. The acreage for each property and the county where each property is located, including lands on which a right-of-way exists which make the lands unsuitable for hunting, and an explanation of why the right-of-way makes the land unsuitable for hunting; and

2. Parcels under fifty (50) acres. No agency shall subdivide land it owns or manages into parcels under fifty (50) acres in an attempt to avoid compliance with the provisions of this section.

(8) The first report under this section shall be due no later than October 1, 2010.

Section 5. KRS 150.022 is amended to read as follows:

(1) The Department of Fish and Wildlife Resources Commission shall consist of nine (9) members, one (1) from each wildlife district, as set out by the commissioner with the approval of the commission, and not more than five (5) of the same political party.

(2) The Governor shall appoint the members of the commission subject to confirmation by the Senate. Each of the members shall be appointed for a term of four (4) years and may be reappointed only once. No person who has been convicted of a felony offense, in Kentucky or under the law of any other state, or any other law of the United States shall be eligible to serve on the commission.

(3) Vacancies through the expiration of terms of the members of the commission shall be filled by appointment by the Governor from a list of five (5) names from each wildlife district, recommended and submitted by the sportsmen of each respective district. When the term of a member expires, the commissioner shall call a meeting of the sportsmen in that district not later than thirty (30) days prior to the expiration of the member's term. Notice of the meeting shall be given by publication pursuant to KRS Chapter 424. At the meeting, the sportsmen in attendance shall select and submit to the Governor a list of five (5) residents and citizens of the district who are well informed on the subject of wildlife conservation and restoration. Each sportsman may vote for one (1) candidate only, and the list submitted to the Governor shall be made up of the names of the five (5) candidates receiving the five (5) highest vote totals. The Governor shall appoint a successor to the member whose term is about to expire within sixty (60) days following the submission to him of the list referred to in this subsection, and in no event later than August 13.

(4) Upon appointment to the commission of the Department of Fish and Wildlife

Resources, each commissioner shall execute a bond of one thousand dollars (\$1,000) in favor of the Department of Fish and Wildlife Resources, the premium on this bond to be paid out of department funds.

(5) In the event of vacancies other than by expiration, the Governor shall fill the vacancy for the unexpired part of the term from the names remaining on the list previously submitted for the district from which the vacancy arose.

(6) Each member of the commission shall take the constitutional oath of office.

(7) The Governor ~~shall~~~~may~~ remove any member of the commission for **cause under subsection (2) of this section and may remove any member of the commission for** inefficiency, neglect of duty, or misconduct in office; but shall first deliver to the member a copy of all charges in writing and afford to him an opportunity of being publicly heard in person or by counsel in defense of the charges, upon not less than ten (10) days' notice. If a member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and his findings thereon, together with a complete record of the proceedings.

(8) Each member of the commission shall be entitled to reimbursement for actual and necessary traveling and other expenses incurred by him in the discharge of his official duties and to be paid from the game and fish fund.

(9) A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power vested in the commission.

(10) The department shall have its principal office in Franklin County, and is authorized to purchase all supplies, equipment, and printed forms and to issue any notices and publications as the commissioner may deem necessary to carry out the provisions of this chapter.

(11) The word "sportsman" as used in this section shall mean a resident hunter or fisherman who has been licensed~~[, or a resident who has registered a motorboat,]~~ in Kentucky for each of the past two (2) consecutive years.

Section 6. KRS 150.150 is amended to read as follows:

(1) Except as provided in this chapter, all moneys derived from the sale of licenses or from any other source connected with the administration of this chapter shall be promptly paid over to the State Treasurer, who shall deposit such moneys in a special fund, known as the game and fish fund, **except that the moneys shall be entered under separate restricted fund accounts, not commingled, and maintained according to generally accepted accounting principles. Moneys derived from the sale of licenses issued under this chapter shall be under separate restricted fund account from any other proceeds derived from this chapter or from proceeds obtained under any other chapter.** The game and fish fund shall be used to carry out the purposes of this chapter and any law or regulation for the protection of wildlife and for no other purpose.

(2) All funds received under KRS 150.110 and 150.520 shall be used by the department for the purpose of enforcing those sections and for the protection and propagation of mussel beds. Any surplus remaining in the fund at the close of each calendar year shall be turned into the general fund of the department.

(3) In addition to the funds derived pursuant to KRS 186.050(15), the department

shall, beginning August 1, 2006, and each fiscal year thereafter, set aside not less than twenty-five thousand dollars (\$25,000) from the game and fish fund for the purpose of promoting hunger relief through specific wildlife management and conservation efforts. The department shall provide for a separate accounting of these funds and shall, by October 1, 2007, and annually thereafter, report on the expenditures made pursuant to this subsection to the Governor and the Legislative Research Commission.

(4) The department shall prescribe a method to allow any applicant for a license required under KRS 150.175 to make, at the time of application, a voluntary contribution in the amount of two dollars (\$2) for the Becoming an Outdoors-Woman Program or other hunter and angler recruitment and retention program. The voluntary contribution shall be deposited into a separate, restricted account within the game and fish fund. The Becoming an Outdoors-Woman Program shall encourage women in developing skills for outdoor recreational activities including but not limited to hunting and angling. The voluntary contribution shall be automatically added to the cost of the license at the time of sale.

Section 7. KRS 150.061 is amended to read as follows:

(1) The commission shall appoint a commissioner of the Department of Fish and Wildlife Resources, who shall be a person with knowledge of and experience in the requirements for the protection, conservation and restoration of the wildlife resources of the state. The commissioner shall serve for **a defined employment contract term not to exceed four (4) years and shall be subject to:**

(a) Annual review by the commission in closed, executive session;

(b) Removal by the commission for the same cause and in the same manner in which the Governor may remove a member of the commission; and

(c) Reappointment by~~an indefinite term, subject to removal by the commission for the same cause and in the same manner in which the Governor may remove a member of the commission.~~

(2) The commissioner shall receive such compensation as the commission may determine, and shall be reimbursed for all actual and necessary travel and other expenses incurred by him in the performance of his official duties.

(3) Before entering upon the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear or affirm that he holds no other public office, nor any position upon or under any political committee or party. Upon appointment by the commission, the commissioner shall execute a bond of five thousand dollars (\$5,000) in favor of the Department of Fish and Wildlife Resources, the premium on said bond to be paid out of department funds.

(4) The commissioner shall have general supervision and control of all activities, functions, appointments, and employees of the Department of Fish and Wildlife Resources. He shall enforce all provisions of the laws of the state relating to wild animals, birds, fish and amphibians, and shall exercise all powers necessarily incident thereto not specifically conferred on the commission. The commissioner shall make an annual report of all receipts and disbursements and file same with the Secretary of State of the Commonwealth of Kentucky.

(5) If federal or other grant funds become available to pay their salaries, the

commissioner may appoint and employ other persons that he may deem necessary or desirable to accomplish the purposes of this chapter. The commissioner shall determine the compensation, duties, and terms of employment of these employees, **and grant funded, time-limited positions shall be approved by the commission as needed.** Employees whose salaries are funded through federal or other grant funds shall not be counted in any tally of permanent employees made for employee cap or budgetary purposes.

Section 8. KRS 235.330 is amended to read as follows:

~~[(1) —]~~ All moneys collected under the provisions of KRS 235.080, 235.130, and 235.220, except that specified for distribution to the county clerks or Transportation Cabinet, shall be paid into the State Treasury in the manner prescribed by law and credited to a special fund known as the fish and game fund **under separate restricted fund account not commingled with funds received under KRS Chapter 150 and maintained according to generally accepted accounting principles.**

~~[(2) — Appropriations for the operation of the Division of Law Enforcement may also be made from the general expenditure fund.]~~

Section 9. KRS 150.725 is amended to read as follows:

As used in KRS 150.725 to 150.735:

- (1) "Permit" means a permit to hold captive cervids;
- (2) "Applicant" means a person or entity who has applied to the department for a permit to hold captive cervids;
- (3) "Application" means an application to obtain a permit to hold captive cervids;~~and]~~
- (4) "Hold" means to confine to a facility regulated under KRS 150.725 to 150.735;
- (5) "Import" means to knowingly bring a captive cervid into the state for the purpose of that captive cervid remaining in the state or being slaughtered in the state. "Import" shall not include transporting a captive cervid into the state for the purpose of transporting that captive cervid through the state to a location out of the state. A captive cervid specified in this subsection shall be deemed to be in transit; and**
- (6) "In transit" means to transport a captive cervid through this Commonwealth by a direct route and in a continuous manner from a location out of state to another location out of state.**

Section 10. KRS 150.740 is amended to read as follows:

* * * * *

(9) A captive cervid originating from outside the Commonwealth of Kentucky which is in transit, as defined in KRS 150.725(6) and which is being transported through the Commonwealth to another state or nation of destination shall meet the entry requirements of the state or nation of destination.

(10) A person intending to transport a captive cervid through Kentucky shall, prior to the captive cervid entering Kentucky, obtain a transportation permit from the Office of the State Veterinarian. This permit shall specify that:

(a) A captive cervid being transported through Kentucky shall not remain in Kentucky for more than twenty-four (24) hours from the time of entry and, if this requirement cannot be met once the animal is in Kentucky, the Office of the State Veterinarian shall be contacted to secure a variance to the permit;

(b) A captive cervid being transported through Kentucky shall not leave the transport vehicle while in Kentucky; and

(c) The person transporting the captive cervid through Kentucky shall follow the routes specified in the transport permit, if this requirement cannot be met once the animal is in Kentucky, the Office of the State Veterinarian shall be contacted to secure a variance to the permit.

Section 11. KRS 150.990 is amended to read as follows:

* * * * *

(11) Any person who violates any of the provisions of KRS 150.390 or KRS 150.092(4) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year, or both. In addition to the penalties prescribed above, he **or she** shall forfeit his license or, if license-exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of KRS 150.092(4) shall be liable to the landowner or occupant for reasonable compensation for damages. Wildlife replacement costs assessed under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the damages be paid through the circuit clerk. Damages assessed under this subsection shall be ordered to be paid directly to the landowner or occupant. The court shall not direct that the damages be paid through the circuit clerk. Any person who possesses, takes, or molests a wild elk in violation of KRS 150.390 or administrative regulations **promulgated**~~adopted~~ under authority of that section shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or imprisoned for up to six (6) months, or both. In addition to these penalties, the person shall pay to the department an amount not to exceed the greater of the replacement cost of the wild elk or double any monetary gain realized from the illegal activity and shall forfeit his or her license or, if license-exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years.

* * * * *

(16) (a) Any person who knowingly violates KRS 150.361 shall for a first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned in the county jail for not more than six (6) months, or both.

(b) Any person who knowingly violates KRS 150.361 shall for a second or subsequent offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) or be imprisoned in the county

jail for not more than six (6) months, or both.

(c) In addition to the penalties specified in paragraphs (a), (b), and (d) of this subsection, a person knowingly violating KRS 150.361 shall forfeit his or her hunting license or, if license-exempt, the privilege to perform the acts authorized by the license for a period of not less than one (1) nor more than three (3) years.

(d) In addition to the penalties specified in paragraphs (a), (b), and (c) of this subsection any person knowingly violating KRS 150.361 shall be liable to the department in an amount not to exceed the greater of the replacement value of any wildlife killed or wounded in violation of KRS 150.361 or double the amount of the monetary gain from the knowing violating of KRS 150.361.

(e) Wildlife replacement costs or other costs specified in paragraph (d) of this subsection shall be ordered paid directly to the department. The court shall not direct that the replacement costs be paid through the circuit clerk.

SECTION 12. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

KRS 150.027 Hearing required before promulgations, amendment, or repeat of administrative regulations affecting property owners or occupants of property adjacent to a lake or other real property owned or controlled by the department.

(1) Not less than sixty (60) days nor more than ninety (90) days prior to the submission of a proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation to the Administrative Regulation Review Subcommittee which affects property owners or occupants of property adjacent to any lake or other real property owned or controlled by the department, the department shall:

(a) Hold a public hearing at a time and location most convenient to the public at a location within ten (10) miles of the boundary of the lake so that the public can make comments about the proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation. Copies of the proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation shall be distributed to members of the public attending the meeting without cost;

(b) Advertise the hearing in accordance with KRS Chapter 424;

(c) Electronically record the hearing and the comments made at the hearing; and

(d) Within thirty (30) days of the close of the hearing, file a statement of consideration with the Administrative Regulation Review Subcommittee summarizing the comments made at the hearing and the department's response thereto containing the information required by KRS 13A.010.

(2) The Administrative Regulation Review Subcommittee shall find deficient any proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation covered by this section which does not comply with the provisions of this section.

SECTION 13. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

KRS 150.028 Required administrative regulations.

The department shall promulgate administrative regulations regarding:

(1) Specific permitted and prohibited uses of department-owned property and activities on department-owned property;

(2) For a violation of an administrative regulation promulgated under subsection (1), (4), or (5) of this section relating to prohibited uses of department-owned property and prohibited activities thereon, offenses and penalties which do not authorize imprisonment, and for which the offense and the penalty are not established by statute;

(3) The issuance of licenses or permits for the use of and conduct of activities on department-owned property, including but not limited to docks on department-owned lakes;

(4) The revocation or suspension, following a hearing pursuant to KRS Chapter 13B, of a license or permit issued pursuant to this section; and

(5) Specific permitted and prohibited uses of a department-owned or controlled buffer zone on land adjacent to a department-owned lake, including sanctions which do not authorize imprisonment for violation of the administrative regulations where a statute does not provide an offense and does not provide a penalty.

SENATE BILL 107 - Salvia

EMERGENCY LEGISLATION (with the exception of Section 17)

SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1450 Trafficking in salvia - Penalty

(1) A person is guilty of trafficking in salvia when he or she knowingly and unlawfully traffics in salvia for human consumption.

(2) Trafficking in salvia is a Class A misdemeanor.

SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1451 Possession of salvia - Penalty

(1) A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.

(2) Possession of salvia is a Class B misdemeanor.

SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1452 Cultivation of salvia - Penalty

(1) A person is guilty of salvia cultivation when he or she knowingly and unlawfully plants, cultivates, or harvests salvia with the intent to sell or transfer it

for human consumption.

(2) *Salvia* cultivation is a Class A misdemeanor.

Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

* * * * *

(35) *"Salvia" means Salvia divinorum or Salvinorin A and includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus salvia;*

(remaining sections are renumbered appropriately)

* * * * *

Section 5. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrophan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methyldesorphine; Methyldihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone); salvia.

* * * * *

Section 6. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

* * * * *

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, salvia, morphine, opium, paraldehyde, peyote, or sulformethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";

Section 7. KRS 218A.1401 is amended to read as follows:

(1) A person is guilty of selling controlled substances to a minor when he, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than salvia to any person under eighteen (18) years of age.

(2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

Section 8. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, trafficking in salvia, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

(1) Pay the costs of disposal of the controlled substances;

(2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;

(3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking

offenses; and

(4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

Section 9. KRS 218A.1411 is amended to read as follows:

(1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

(2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to *salvia*.

Section 10. KRS 218A.1413 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, *salvia*, or marijuana; or

* * * * *

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class D felony.

(b) For a second or subsequent offense be guilty of a Class C felony.

Section 11. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, *salvia*, or marijuana.

(2) Possession of a controlled substance in the second degree is:

(a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

Section 12. KRS 218A.276 is amended to read as follows:

(1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 **or possession of *salvia* pursuant to KRS 218A.1451** may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a

program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.

(2) The secretary of the Cabinet for Health and Family Services, or his designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.

(3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.

(4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.

(5) The secretary of the Cabinet for Health and Family Services, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.

(6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.

(7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.

(8) In the case of any person who has been convicted of possession of marijuana **or possession of salvia**, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

Section 13. KRS 218A.410 is amended to read as follows:

(1) The following are subject to forfeiture:

(a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and

summarily forfeited to the state.

(b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.

(e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.

(f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.

(g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.

(h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana or salvia.

(i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(j) Everything of value furnished, or intended to be furnished, in exchange for a

controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.

(k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana or salvia, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

(2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

(3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

Section 14. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

* * * * *

(5) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

Section 15. KRS 218A.992 is amended to read as follows:

(1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:

(a) Be penalized one (1) class more severely than provided in the penalty provision

pertaining to that offense if it is a felony; or

(b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.

(2) The provisions of this section shall not apply to a violation of KRS 218A.210 or KRS 218A.1450 through KRS 218A.1452.

Section 16. KRS 530.064 is amended to read as follows:

(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

(a) Illegal sexual activity; or

(b) Illegal controlled substances activity other than activity involving marijuana or salvia as defined in KRS 218A.010(35);

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

(2) Unlawful transaction with a minor in the first degree is a:

(a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;

(b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and

(c) Class A felony if the minor so used incurs physical injury thereby.

Section 17. KRS 514.040 is amended to read as follows:

* * * * *

(4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:

(a) The maker had no account with the drawee at the time the check or order was issued; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. Notice of the refusal may include a citation to this section and a description of this section's criminal penalties and shall be deemed properly addressed when mailed to the address printed or written on the check or sight order or provided by the drawer or maker upon issuance of the check or sight order.

The notice, if mailed, shall be deemed received by the addressee seven (7) days after it is placed in the United States mail. The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed, that correct postage was applied, and the date the notice was placed in the United States mail. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted ~~reasonable~~ bad check handling fee not to exceed fifty dollars (\$50) and any fee imposed pursuant to subsection (5) of this section.

Section 18. Whereas salvia divinorum is a dangerous hallucinogen that is currently

legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of this substance immediately in an effort to prevent stockpiling of salvia divinorum by individuals for future use, an emergency is declared to exist, and Sections 1 to 16 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

SENATE BILL 131 – Juvenile Justice

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

KRS 15A.0651 Access to juvenile facility records - When permitted - Appeal of denial.

(1) As used in this section, "juvenile facility" means any facility wherein a juvenile or other person under the authority of the Department of Juvenile Justice is confined.

(2) KRS 61.870 to 61.884 to the contrary notwithstanding, a person shall not have access to a record if its disclosure is deemed by the commissioner of the Department of Juvenile Justice or his or her designee to constitute a threat to the security of the juvenile, the juvenile facility, or any other person.

(3) KRS 61.870 to 61.884 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any person confined in a juvenile facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record that contains a specific reference to the individual making the request.

(4) KRS 61.870 to 61.884 to the contrary notwithstanding, if a person confined in a juvenile facility wishes to challenge a denial of a request to inspect a public record, he or she shall mail or otherwise send the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.

(5) KRS 61.870 to 61.884 to the contrary notwithstanding, all records relating to juvenile detention containing information expunged pursuant to law shall not be open to the public.

(6) KRS 61.870 to 61.884 to the contrary notwithstanding, upon receipt of a request for a record, the department shall respond to the request within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, and shall state whether the record may be inspected or may not be inspected, or that the record is unavailable and when the record is expected to be available.

(7) Nothing in this section shall authorize the department to deny any attorney representing a juvenile access to any record to which the attorney or the juvenile would otherwise be entitled.

SENATE BILL 141 – Persistent Felony Offenders

Section 1. The following KRS section is repealed:

210.360 Mental examination of persistent felony offenders.

HOUSE

HOUSE BILL 1 - Domestic Violence (Amanda Ross Bill)

Section 1. KRS 403.720 is amended to read as follows:

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- (2) "Family member" means a spouse, including a former spouse, a grandparent, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim; ~~related by consanguinity or affinity within the second degree; and~~
- (3) "Global positioning monitoring system" means a system that electronically determines a person's location through global positioning satellite technology, radio frequency technology, or a combination thereof and reports the location of an individual through the use of a transmitter or similar device worn by that individual and that transmits latitude and longitude data to a monitoring entity. The term does not include any system that contains or operates global positioning system technology, or any other similar technology, that is implanted or otherwise invades or violates the individual's body; and
- (4) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

Section 2. KRS 403.740 is amended to read as follows:

- (1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:
 - (a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restraining the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restraining the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Restraining the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;
 - (e) Directing the adverse party to vacate the residence shared by the parties to the action;
 - ~~(f)~~ ~~(e)~~ Utilizing the criteria set forth in KRS 403.270, 403.320, and KRS 403.822, grant

temporary custody;~~or~~

(g) Restraining the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or

(h)~~(f)~~ Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof, except that the use of a global positioning monitoring system shall not be ordered.

(2) Except as provided in KRS 403.036, if the court issues an emergency protective order pursuant to subsection (1) of this section, the court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.

(3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.

(4) An emergency protective order issued in accordance with this section shall be effective **until the full hearing provided for in this subsection or in KRS 403.745, or until withdrawn by the court**~~for a period of time fixed in the order, but not to exceed fourteen (14) days~~. Upon the issuance of an emergency protective order, **the court shall set** a date **and time** for a full hearing, **within fourteen (14) days** as provided for in KRS 403.745, **and shall summon the adverse party to appear. If, at the hearing, the adverse party is not present and has not been served, the emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future.**~~[shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days] If service has not been made on the adverse party prior to seventy-two (72) hours before that hearing or a subsequent hearing, the emergency protective order shall remain in place and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. Before issuing the new summons, the court shall note the length of time that has passed since the issuance of the emergency protective order, during which the adverse party has not been served. The court shall repeat the process of continuing the hearing and reissuing a new summons after noting the lapse of time since the issuance of the emergency protective order until the adverse party is served at least seventy-two (72) hours in advance of the scheduled hearing. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner~~~~[by the fixed court date and time or as the court determines is necessary for the protection of the petitioner]~~.

(5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the **summons**~~[notice]~~ setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

(6) (a) The provisions of this section permitting the continuance of an emergency protective order shall be limited to six (6) months from the issuance

of the initial emergency protective order.

(b) If the respondent has not been served within the six (6) month period, the emergency protective order shall be rescinded without prejudice. Prior to the expiration of the emergency protective order, the court shall provide notice to the petitioner stating that if the petitioner does not file a new petition the order shall be rescinded without prejudice.

(c) A new emergency protective order shall not be issued by the court unless the petitioner files a new petition, which shall start the six (6) month process again.

(d) The total length of time that a series of emergency protective orders may remain in effect without the respondent being served shall not exceed two (2) years.

SECTION 3. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

KRS 403.741 Consideration of respondent's criminal history and past emergency protective order or domestic violence order required.

(1) Prior to a hearing on a domestic violence order, the petitioner or the respondent may request the court to obtain the information specified in this subsection, or the court on its own motion may obtain the information specified in this subsection:

(a) Obtain the respondent's Kentucky criminal history from the Department of Kentucky State Police or the Administrative Office of the Courts; and

(b) Obtain the history of any Kentucky emergency protective orders or domestic violence orders relating to the respondent, and the record of compliance with those orders from the Administrative Office of the Courts.

(2) After obtaining the information requested in subsection (1) of this section, the court shall review the documents which have been received and shall:

(a) Consider the respondent's criminal history, paying particular attention to the respondent's record of past violence, threats of violence, and danger to others;

(b) Consider the record of any past emergency protective orders or domestic violence orders entered by any Kentucky court relating to the respondent and the record of the respondent's compliance or noncompliance with those orders; and

(c) Utilize that information at any hearing required by KRS 403.740 or 403.745 to assess which sanctions may protect against danger to the petitioner or a family member or member of an unmarried couple for whom protection is being sought.

(3) The court shall provide a copy of the respondent's criminal history information, emergency protective order history information, and domestic violence order history information to the petitioner and to the respondent or counsel for the petitioner and counsel for the respondent in accordance with the provisions of CR 26, including CR 26.03, of the Rules of Civil Procedure.

SECTION 4. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

KRS 403.743 Referral of petitioner to county attorney - Duties of county attorney

(1) (a) Based upon the information which the court has received as required by KRS 403.741, including but not limited to the respondent's Kentucky criminal history, the respondent's domestic violence order history, domestic violence order compliance history, and the information contained in the petition, the court may, if the court deems it appropriate, suggest that the petitioner contact the county attorney.

(b) If the court decides to refer the petitioner to the county attorney, the court shall explain to the petitioner that the purpose of the meeting is so that the county attorney can explain to the petitioner the options that the petitioner may have with regard to the filing of criminal charges regarding any alleged act of domestic violence within the purview of KRS 403.715 to 403.785.

(c) The court shall explain to the petitioner that contacting the county attorney is voluntary and not mandatory.

(2) If the petitioner decides to contact the county attorney, the court shall notify the county attorney and assist in facilitating a meeting between the petitioner and the county attorney.

(3) At a meeting with the petitioner, the county attorney shall:

(a) Ascertain from the petitioner the facts of the incident;

(b) Determine which criminal offenses may have been committed by the respondent;

(c) Advise the petitioner of the statutes which may have been violated, the potential penalties involved, the details of bringing a criminal action, and the standard of proof required in a criminal action; and

(d) Such other information as the county attorney deems appropriate.

(4) (a) At the meeting, the county attorney shall answer, in the fullest manner possible, any questions relating to filing and prosecution of criminal charges which the petitioner may have.

(b) The county attorney shall explain to the petitioner that the petitioner is not obligated to file criminal charges and may continue with the civil domestic violence order process.

(5) If the petitioner desires to file criminal charges, the county attorney shall assist the petitioner in filing a criminal complaint and obtaining a summons or warrant of arrest for the respondent.

Section 5. KRS 403.750 is amended to read as follows:

(1) Following the hearing provided for under KRS 403.740 and 403.745, the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:

(a) Restrain the adverse party from any contact or communication with the petitioner except as directed by the court;

(b) Restrain the adverse party from committing further acts of domestic violence and abuse;

(c) Restrain the adverse party from disposing of or damaging any of the property of the parties;

(d) **Restrain the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;**

(e) Direct the adverse party to vacate the residence shared by the parties to the action;

~~(f)(e)~~ Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, award temporary custody;

~~(g)(f)~~ Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary support;

~~(h)(g)~~ Direct that either or both parties receive counseling services available in the community, except that the court shall not order or refer the parties to participate in mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.715 to 403.785;~~or~~

(i) **Restrain the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or**

~~(j)(h)~~ **Except for ordering the use of a global positioning monitoring system, which shall not be utilized until after a court determines that a substantial violation of a domestic violence order has occurred,** enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.

(2) Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.

(3) Upon proper filing of a motion, either party may seek to amend a domestic violence order.

(4) When temporary child support is granted under the provisions of this section, the court shall enter an order detailing how the child support is to be paid and collected. The enforcement procedures for child support orders, entered pursuant to KRS 403.211, 403.212, and 403.213, including but not limited to 403.215, shall be available to temporary child support orders issued under KRS 403.715 to 403.785.

(5) Any order entered pursuant to this section restraining a party or parties to an action shall be issued without bond being required of the petitioner.

SECTION 6. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

KRS 403.747 Testimony to be given under oath - Consideration of specified areas respondent to be excluded from.

(1) Testimony taken at any hearing or other proceeding authorized by KRS 403.715 to 403.785 shall be taken under oath.

(2) (a) Before imposing a condition described in subsection (1)(d) of KRS 403.740 or subsection (1)(d) of KRS 403.750, the court shall afford the petitioner an opportunity to provide the court with a list of specified areas from which the

petitioner would like the respondent excluded and shall consider the petitioner's request, if any, in determining the locations the respondent will be ordered to refrain from going to or near. The petitioner shall provide the court with an explanation of the reasons for and the benefits of ordering the respondent to be excluded from each location.

(b) Before imposing a condition described in subsection (1)(d) of KRS 403.750, a court shall afford the respondent an opportunity to provide the court with any objections or concerns relating to areas which the petitioner has requested that the respondent be ordered to refrain from going to or near. The respondent shall provide the court with an explanation of the reasons for or the benefits of denying the petitioner's request that the respondent be excluded from each location. If the respondent or counsel for the respondent fails to appear for the hearing, the respondent is deemed to waive, until and unless another hearing is set, any objection to the petitioner's request.

(3) If the court imposes a condition described in subsection (1)(d) of KRS 403.740 or subsection (1)(d) of KRS 403.750, the court shall specifically describe the locations that the respondent has been ordered to refrain from going to or near and the minimum distances, if any, that the respondent shall maintain from those locations. The court may consider whether the respondent may pass a prohibited location when going to or from any other location and the times of and necessity for modifying any order to accommodate this travel, provided that the respondent does not interrupt his or her travel to harass, harm, or attempt to harm the petitioner.

(4) The court shall not order the respondent to refrain from going to or near a location where there is not a specific, demonstrable danger to the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.

SECTION 7. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

KRS 403.761 Substantial violation of domestic violence order - Hearing - Imposition of global positioning monitoring in lieu of imprisonment - Cost to be paid by respondent - Exceptions - Violation of global positioning monitoring requirements.

(1) As used in this section, "substantial violation" means a violation of a domestic violence order that has resulted in one (1) or more of the following acts by the respondent against the petitioner, minor child of a petitioner, family member, or member of an unmarried couple protected in the order:

(a) An assault prohibited by KRS Chapter 508;

(b) Menacing as prohibited by KRS 508.050;

(c) Terroristic threatening as prohibited by KRS Chapter 508;

(d) Stalking as prohibited by KRS Chapter 508;

(e) Wanton endangerment as prohibited by KRS Chapter 508;

(f) Kidnapping or a related offense as prohibited by KRS Chapter 509;

(g) A sexual offense as prohibited by KRS Chapter 510 other than indecent exposure;

- (h) Burglary as prohibited by KRS Chapter 511;
- (i) Destruction or damage to property as prohibited by KRS Chapter 512;
- (j) Theft as prohibited by KRS Chapter 514;
- (k) Harassment or harassing communications as prohibited by KRS Chapter 525; or
- (l) Any felony offense against the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.
- (2) Following a report of an alleged substantial violation of a domestic violence order by a respondent and prior to any civil hearing on the alleged violation of the order, the court shall obtain an updated report of the respondent's Kentucky criminal history from the Administrative Office of the Courts or the Department of Kentucky State Police and shall obtain from the Administrative Office of the Courts the history of Kentucky Emergency Protective Orders and Domestic Violence Orders against the respondent, together with any violations of those orders.
- (3) Following an alleged substantial violation of a domestic violence order, the court shall hold a hearing to determine if the violation occurred, and if the violation occurred, what sanctions the court may apply. At the hearing the court shall explain the sanctions which may be imposed to the petitioner and the respondent. The court shall explain to the petitioner that the court may require a respondent who has committed a substantial violation of the domestic violence order to wear a global positioning monitoring system device in lieu of imprisoning the respondent and, except as provided in this section, to pay the costs associated with operating that system in relation to the respondent and the costs associated with operating the system in relation to the petitioner if the petitioner elects to participate.
- (4) Before imposing global positioning monitoring, the court shall provide to the petitioner information regarding:
 - (a) The petitioner's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the court terminate the petitioner's participation;
 - (b) The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the respondent's location and movements;
 - (c) Any locations that the respondent is ordered to refrain from going into or near and the minimum distances, if any, that the respondent shall maintain from those locations;
 - (d) Any sanctions that the court may impose on the respondent for violating, in the future, a condition of the domestic violence order imposed under this section;
 - (e) The procedure that the petitioner is to follow, and support services available to assist the petitioner, including but not limited to a designated person or office to notify if the respondent violates a condition of the domestic violence order or if the global positioning monitoring equipment of the respondent or of the petitioner fails; and
 - (f) Community services available to assist the petitioner in obtaining shelter,

counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence.

(5) Prior to ordering the respondent to wear a global positioning monitoring system device the court shall provide the respondent an opportunity to controvert the information provided by the petitioner or any other source and to provide to the court the respondent's reasons why the respondent should not be ordered to wear a global positioning monitoring system device.

(6) If the court orders the respondent to wear a global positioning monitoring system device, in addition to the information described in subsection (4) of this section, the court shall provide to the petitioner who participates in a global positioning monitoring system under this section, the name and telephone number of an appropriate local law enforcement agency in the county in which the order is issued whom the petitioner may call to request immediate assistance if the respondent violates a condition of the domestic violence order imposed pursuant to KRS 403.740 and this section. If the local law enforcement agency does not provide service twenty-four (24) hours per day, seven (7) days per week, the petitioner shall be instructed to call the local public safety answering point using the 911 telephone number.

(7) If the petitioner has requested that the respondent be ordered to wear a global positioning monitoring system device, the court shall, prior to ordering the respondent to wear a global positioning monitoring system device under this section:

(a) Consider the likelihood that without the utilization of a global positioning monitoring system the respondent will seek to kill, assault, stalk, harass, menace, or otherwise threaten the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order; and

(b) Enter a determination of findings of fact and reasons as to why the petitioner's request for the respondent to be ordered to participate in global positioning monitoring is being granted or denied.

(8) A petitioner may request that the court terminate the petitioner's participation in a global positioning monitoring system at any time.

(9) (a) When a court determines that the respondent shall wear a global positioning monitoring system device, the court shall notify the respondent, the petitioner, and the entity providing global positioning monitoring system services of:

1. The fact that global positioning monitoring system participation has been ordered;
 2. The cost that the respondent is to pay to the entity providing the global positioning monitoring system services, including but not limited to the amount to be paid, the frequency of the payments, the location to which the payments shall be sent, and the duration of the payments;
 3. The cost of the administrative fee that the respondent is to pay to the county or counties providing the monitoring service;
 4. The restrictions on the respondent with regard to locations which the respondent is not to go into or near and the specific distances contained in the order;
 5. The permitted exceptions to the restrictions on the respondent which relate to permitted travel by the respondent which may bring the respondent near or into a location where the respondent normally would be prohibited from going into or near;
 6. The duration of time that the respondent shall wear the device which shall not exceed the duration of the underlying domestic violence order but which may be shorter than the underlying domestic violence order. The date of expiration of the requirement to wear the device shall be specified in the order;
 7. The notifications to be made in the event that the respondent violates the domestic violence order; and
 8. Such other information as the court deems appropriate.
- (b) If the court determines that a respondent is indigent, the court may, based on a sliding scale established by the Supreme Court of Kentucky by rule, require the respondent to pay the costs imposed under this section in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the respondent or providing the petitioner with an electronic receptor device.
- (c) If a respondent pays to an entity that operates a global positioning monitoring system the amount ordered by the court under this subsection, the entity shall accept the amount as payment in full. Neither the Commonwealth, nor the Court of Justice nor the county, urban county, charter county, or consolidated local government shall be responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent respondent or petitioner.
- (d) A court that imposes a condition described by this section shall order the entity that operates the global positioning monitoring system to immediately notify the petitioner, the court, and the appropriate local law enforcement agency named in the order if a respondent violates a condition of the domestic violence order imposed under this section or KRS 403.750.
- (10) The provisions of this section do not limit the authority of a court to impose any other reasonable conditions authorized by KRS 403.740, KRS 403.750 or KRS 403.747.
- (11) (a) A respondent who has been ordered by a court to wear a global positioning monitoring system monitoring device pursuant to this section shall

not, without written permission from the court issuing the order or a higher court to which the issuance of the order has been appealed:

1. Fail to wear the device;
2. Remove a device that the respondent has been ordered to wear; or
3. Tamper with or destroy a device that the respondent has been ordered to wear.

(b) A respondent who violates paragraph (a) of this subsection shall be guilty of a Class D felony.

(c) The provisions of this section shall not apply to a respondent who, upon the expiration of the order that required the respondent to wear the global positioning monitoring system device, permits the entity providing the monitoring to remove the device.

(12) A person, county, or other organization may voluntarily agree to pay all or a portion of a defendant's monitoring costs specified in this section.

(13) (a) The provisions of this section shall not prohibit a court from imposing any other authorized sanction for a substantial violation of a domestic violence order.

(b) The provisions of this section shall not prohibit a court from imposing any authorized sanction, other than ordering the respondent to wear a global positioning system monitoring device, for a violation of a domestic violence order which does not constitute a substantial violation as defined in this section.

SECTION 8. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

KRS 403.762 Request for modification of global positioning monitoring order - Hearing.

(1) At any time following three (3) months since the entry of the order requiring the respondent to wear a global positioning monitoring system device, the respondent may apply to the court issuing the order for a modification shortening the duration of the order or rescinding the order.

(2) Prior to acting on the respondent's request, the court shall conduct a hearing during which the opinions of both the respondent and petitioner and the evidence supporting or controverting the respondent's request shall be heard and considered by the court.

(3) If the respondent has not violated the order requiring that the respondent wear a global positioning monitoring system device, the court may shorten the duration which the respondent shall be required to wear the global positioning monitoring system device or may vacate the order.

(4) If the court denies a respondent's application to shorten the time for wearing a global positioning monitoring system device or to vacate the order, the respondent shall not make another application to the court for a period of six (6) months from the date of the denial of the previous application.

SECTION 9. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:

KRS 67.372 County administration of global positioning monitoring system

program - Conditions - Agreements between counties - Administrative fee.

Any county or combination of counties may operate a global positioning monitoring system program subject to the following conditions:

(1) The program shall be assigned by ordinance to a county department or county agency that agrees to operate or supervise the program continuously, twenty-four (24) hours per day, seven (7) days per week;

(2) Each county shall identify a law enforcement agency or agencies with jurisdiction in the county to assist a petitioner, victim, or witness when a person ordered to wear a monitoring device violates the provisions of the court's order and is in need of assistance;

(3) A county or counties electing to contract with an entity providing a global positioning monitoring system and devices shall meet not less than all of the requirements of this section and KRS 403.761.

(4) Each county shall monitor the performance of the entity providing the global positioning system and devices and shall have a provision in the contract with the monitoring entity agreeing to the termination of the contract in the event of serious or continued violations of the contract;

(5) Any system chosen shall use the most appropriate global positioning technology to track the person ordered to wear the monitoring device and shall include technology that:

(a) In a domestic violence case under KRS 403.715 to 403.785:

1. Notifies law enforcement or other monitors of any breach of the court-ordered boundaries;

2. Notifies the petitioner in a timely manner of any breach; and

3. Allows monitors to communicate directly with the person ordered to wear the monitoring device; and

(b) In other situations in which monitoring is authorized by KRS 403.762, KRS 67.374, KRS 431.517, KRS 431.518, KRS 431.520, KRS 533.250, and KRS 533.030, the contracting county or combination of counties shall, in the contract, specify the type and level of global positioning monitoring system services desired;

(6) The monitoring entity shall agree to a price for monitoring during the duration of the contract which shall not be increased but may be reduced during the duration of the contract. The contract shall provide that reduced payments shall be accepted by the vendor as a full payment for all purposes from persons determined to be indigent by a court or other authority ordering the use of monitoring. In bidding for the contract the vendor may take into account that some monitored persons will not be able to pay the full cost of the monitoring or may not be able to pay any cost for the monitoring. The contract shall specify that no unit of state or local government and no public officer or employee shall be liable for the costs of monitoring under the contract. Notwithstanding the provisions of this subsection, a county or counties may agree to pay all or a part of the monitoring fee to the monitoring entity if the county would have otherwise been required by a court to place a person in jail at county expense and the cost of the monitoring is less than the cost of placing the person in jail;

(7) Agreements between counties for monitoring services may, with the approval of their governing bodies, be consummated by a contract signed by all

counties party thereto or by an interlocal cooperation agreement;

(8) A county utilizing a global positioning monitoring system program may charge an administrative fee to a person ordered to participate in a global positioning monitoring program to provide for the county's cost in administering the monitoring program. The fee shall be set by ordinance and shall be in addition to the fee charged by the entity contracted to provide the monitoring; and

(9) The provisions of KRS 403.720, KRS 403.740, KRS 403.741, KRS 403.743, KRS 403.750, KRS 403.747, KRS 403.761 and KRS 403.762 shall not apply to a person ordered to participate in a global positioning monitoring system under KRS 431.517, KRS 431.518, KRS 431.520, KRS 533.250 and KRS 533.030. The provisions of a court order that relate to a person ordered to participate in a global positioning monitoring system pursuant to KRS 431.517, KRS 431.518, KRS 431.520, KRS 533.250 and KRS 533.030 shall govern that person's conduct and any reporting or other requirements ordered by the court.

SECTION 10. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:

KRS 67.374 County global positioning monitoring system program - Request for an acceptance of public bids - Monitoring of successful bidder - Other uses of program permitted - Confidentiality of system information.

(1) "Global positioning monitoring system" has the same meaning as in KRS 403.720.

(2) A county or combination of counties electing to participate in a global positioning monitoring system program shall, by ordinance, set other requirements for global positioning monitoring system devices and for the operation of the global positioning monitoring system which shall include, at a minimum, the requirements contained in KRS 403.715 to 403.785 and the provisions of this section and KRS 67.372.

(3) A county or combination of counties electing to participate in a global positioning monitoring system program shall, through a public bid process, select an entity or entities to provide the best available technology with regard to global positioning monitoring system devices that meet the requirements of this section and Sections KRS 403.720, KRS 403.750, KRS 403.747, KRS 403.761 and KRS 67.371 and a system that meets those same requirements, including but not limited to the acceptance of reduced fees for petitioners and indigent persons ordered to wear a monitoring device.

(4) A person, county, or combination of counties electing to participate in a global positioning monitoring system program shall continuously monitor the performance of successful bidders, receive complaints regarding service, and conduct hearings pursuant to KRS Chapter 13B which may result in penalties as set out in the contract against an entity providing global positioning monitoring system services or which may result in cancellation of the contract with the provider of the service, or both. The provisions of this subsection shall be part of any bid offering and any contract entered into between the county or combination of counties and an entity providing global positioning monitoring system

services.

(5) A county or combination of counties electing to operate a global positioning monitoring system program may utilize that program for:

(a) Monitoring a domestic violence respondent and petitioner pursuant to KRS 403.715 to 403.785;

(b) Monitoring the pretrial release of a person charged with a crime pursuant to KRS 431.515 to 431.550;

(c) Monitoring a person assigned to a pretrial diversion program pursuant to KRS 533.250 to 533.262; and

(d) Monitoring a person granted probation or conditional discharge pursuant to KRS Chapter 533.

(6) Information obtained by a global positioning monitoring system shall not be a public record.

(7) Information obtained by a global positioning monitoring system shall be used only for the purpose of verifying the location of the monitored person. Global positioning monitoring system information obtained from persons subject to monitoring pursuant to KRS 403.715 to 403.785 shall not be utilized for any criminal investigation, prosecution, or other criminal justice related purpose without a valid search warrant or order issued by a court of competent jurisdiction. Information obtained in violation of this subsection or without a valid search warrant or court order shall be inadmissible in court for any purpose.

(8) Any person or organization who knowingly or wantonly divulges global positioning monitoring system information about any person in violation of subsection (6) or (7) of this section shall be guilty of a Class A misdemeanor.

Section 11. KRS 431.517 is amended to read as follows:

(1) Except as provided in this section, home incarceration may be ordered as a form of pretrial release, subject to the conditions imposed by the provisions of KRS 532.200 to 532.250.

(2) A court ordering home incarceration as a form of pretrial release pursuant to this section may order the defendant to participate in a global positioning monitoring system program during all or part of the time of pretrial release through the use of a county-operated program pursuant to Sections 9 and 10 of this Act and not a program operated by the Department of Corrections pursuant to KRS 532.210 to 532.250.

(3) A court ordering global positioning monitoring system program participation for a defendant pursuant to this section shall:

(a) Require the defendant to pay all or the part of the monitoring costs based on the sliding scale adopted by the Supreme Court of Kentucky as specified in Section 7 of this Act and administrative costs for participating in the system;

(b) Provide the monitoring system with a written or electronic copy of the conditions of release; and

(c) Provide the monitoring system with a contact at the office of the circuit clerk, Commonwealth's attorney, or county attorney, as appropriate, or pretrial release services for reporting violations of the monitoring order.

(4) A person, county, or other organization may voluntarily agree to pay all or

a portion of a defendant's monitoring costs specified in KRS 403.761.

Section 12. KRS 431.518 is amended to read as follows:

When considering the pretrial release of a person charged with a felony offense under KRS Chapter 218A or a person charged with a felony offense whose criminal record indicates a history of recent and relevant substance abuse, the court considering the release shall cause the court's pretrial release investigation and services office to have the person screened for recent and relevant substance abuse risk factors. A person's refusal to participate in the screening shall not disqualify the person from being granted pretrial release. If this screening indicates the presence of recent and relevant substance abuse risk factors, the court may order as a condition of pretrial release that the person:

- (1) Undertake any testing ordered by the court under KRS 431.520 or 431.525;
- (2) Participate in an additional assessment of the person's condition;
- (3) Participate in a secular or faith-based treatment or recovery program if one (1) is identified as appropriate to the person as a result of the person's initial assessment or an additional assessment performed under subsection (2) of this section;~~and~~
- (4) Appear at any subsequent hearing ordered by the court where the person's conditions of pretrial release may be reviewed and modified as the result of any testing performed under subsection (1) of this section, any additional assessment performed under subsection (2) of this section, any additional assessment of the defendant performed by a qualified mental health professional which the defendant may offer for the court's consideration, or the person's compliance with any treatment or recovery plan ordered by the court under subsection (3) of this section;**and**
- (5) Participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and KRS 67.374 under the same terms and conditions as provided in KRS 431.517 during all or part of the person's period of release pursuant to this section.**

Section 13. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of a bail bond:
 - (a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant, and his financial and

employment circumstances; or

(b) With the 10% deposit as provided in KRS 431.530; or

(c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;

(4) If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;

(5) **(a) During all or part of a person's period of release pursuant to this section, order the person to participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and KRS 67.374 under the same terms and conditions provided under KRS 431.517.**

(b) If the person is charged with a sex crime as defined in KRS 17.500, consider requiring that he or she be monitored electronically, and shall consider requiring the person be subject to home incarceration;

(6) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;

(7) A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;

(8) A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;

(9) If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may:

(a) Order the arrest of the defendant;

(b) Enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed; or

(c) Both.

A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court

finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

Section 14. KRS 533.250 is amended to read as follows:

* * * * *

(2) Upon the request of the Commonwealth's attorney, a court ordering pretrial diversion may order the person to participate in a global positioning system monitoring system program through the use of a county-operated program pursuant to KRS 67.372 and KRS 67.374 for all or part of the time during which a pretrial diversion agreement is in effect.

(3) A court ordering global positioning monitoring system for a person pursuant to this section shall:

(a) Require the person to pay all or a part of the monitoring costs based upon the sliding scale determined by the Supreme Court of Kentucky pursuant to KRS 403.761 and administrative costs for participating in the system;

(b) Provide the monitoring system with a written or electronic copy of the conditions of release; and

(c) Provide the monitoring system with a contact at the office of the Commonwealth's attorney for reporting violations of the monitoring order.

(4) A person, county, or other organization may voluntarily agree to pay all or a portion of a person's monitoring costs specified in subsection (3) of this section.

(5) The court shall not order a person to participate in a global positioning monitoring system program unless the person agrees to the monitoring in open court or the court determines that public safety and the nature of the person's crime require the use of a global positioning monitoring system program.

(remaining sections renumbered)

Section 15. KRS 533.030 is amended to read as follows:

(1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

(a) Avoid injurious or vicious habits;

(b) Avoid persons or places of disreputable or harmful character;

(c) Work faithfully at suitable employment as far as possible;

(d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;

(e) Post a bond, without surety, conditioned on performance of any of the prescribed

conditions;

- (f) Support his dependents and meet other family responsibilities;
- (g) Pay the cost of the proceeding as set by the court;
- (h) Remain within a specified area;
- (i) Report to the probation officer as directed;
- (j) Permit the probation officer to visit him at his home or elsewhere;
- (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;~~[-and]~~
- (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court; and
- (m) During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and KRS 67.374 under the same terms and conditions as provided in KRS 431.517.**

* * * * *

Section 16. KRS 15.334 is amended to read as follows:

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
 - (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
 - (b) The dynamics of domestic violence, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape;
 - (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome; and
 - (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin.
- (2) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified

peace officer shall be required to take these courses no more than two (2) times in eight (8) years.

(3) **The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.**

(4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.

~~(5)~~(4) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

Section 17. KRS 431.005 is amended to read as follows:

(1) A peace officer may make an arrest:

(a) In obedience to a warrant; or

(b) Without a warrant when a felony is committed in his presence; or

(c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or

(d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or

(e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.

(2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.

(b) For the purposes of this subsection, the term "family member" **has the same meaning as set out in KRS 403.720**~~means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree~~.

(c) For the purpose of this subsection, the term "member of an unmarried couple" **has the same meaning as set out in KRS 403.720**~~means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together~~.

(3) A peace officer may arrest a person without a warrant when the peace officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sex Offender Registry requirements based upon information received from the Law Information Network of Kentucky.

(4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an officer certified pursuant to KRS 15.380.

(5) If a law enforcement officer has probable cause to believe that a person has

violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

(6) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.

(7) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

SECTION 18. A NEW SECTION OF KRS CHAPTER 511 IS CREATED TO READ AS FOLLOWS:

KRS 511.085 Domestic violence shelter trespass

(1) As used in this section, "domestic violence shelter" means a residential facility providing protective shelter services for domestic violence victims.

(2) A person is guilty of domestic violence shelter trespass when:

(a) The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the building or premises as being a domestic violence shelter; and

(b) At the time of the entering, the person is the subject of an order of protection entered under KRS 403.740 or KRS 403.750 or a foreign protective order filed under KRS 403.7521.

(3) It shall be a defense to a prosecution under this section that the person entered the shelter with the permission of the operator of the shelter after disclosing to the operator that the person is the subject of an order of protection or a foreign projective order. Authority to enter under this subsection may not be granted by a person taking shelter at the facility.

(4) A person shall not be convicted of a violation of this section and a violation of KRS 511.060, 511.070, or 511.080 arising from the same act of trespass.

(5) Domestic violence shelter trespass is a Class A misdemeanor.

Section 19. KRS 403.735 is amended to read as follows:

(1) Upon the filing of a petition, as provided for in KRS 403.725, the court, after review of the petition and determining that domestic violence and abuse exists, without a jury, shall utilize one (1) of the alternatives provided for in KRS 403.740 or 403.745.

(2) A court may issue mutual protective orders only if a separate petition is filed by the respondent. Pursuant to KRS 403.740 and 403.750, the court shall then provide orders, sufficiently specific to apprise any peace officer as to which party has violated the order if there is probable cause to believe a violation of the order has occurred.

(3) (a) All courts shall provide twenty-four (24) hour access to emergency protective orders.

(b) Each court shall submit written procedures for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.

(c) Each court shall establish the local protocol in domestic violence matters in which

there may be joint jurisdiction between District and Circuit Court. Each court shall submit the written procedures to be reviewed and approved by the Kentucky Supreme Court.

(d) All amendments or revisions to the local procedures required pursuant to this section shall be submitted to the Kentucky Supreme Court for review and approval.

(4) If an emergency protective order is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it.

(5) If the court determines that the petitioner is not eligible for an emergency protective order, the court shall inform the petitioner of the petitioner's ability to contact the county attorney as provided in KRS 403.743.

~~(6)~~~~(5)~~ An order of protection issued under the provisions of KRS 403.715 to 403.785 shall become effective and binding on the respondent at the time of personal service or when the respondent is given notice of the existence and terms of the order by a peace officer or the court, whichever is earlier. After notice of the existence and terms of the order is given to the respondent, a peace officer or the court may enforce the terms of the order, and act immediately upon any violation of the order. After notice of the order, all reasonable efforts shall be made by the peace officer or the court to arrange for personal service of the order upon the respondent.

Section 20. This Act shall be known as the "Amanda Ross Domestic Violence Prevention Act."

HOUSE BILL 19 – CCDW Permits for Military

Section 1. KRS 36.450 is amended to read as follows:

(1) Except as provided for in ~~subsections~~~~[subsection]~~ **(5), (6), and (7)** of this section, notwithstanding any other provision of law, a license, permit, or certification held by a member of the United States Armed Forces, including a member of the Kentucky National Guard or Reserve on federal active duty, that expires while that member is deployed overseas shall be extended until ninety (90) days after the end of the deployment.

(2) The hiring, licensing, permitting, or certifying authority shall renew a license, permit, or certification extended under subsection (1) of this section until the next date that the license, permit, or certification expires or for the period that the license, permit, or certification is normally issued, at no cost to the member, if that member:

(a) Requests renewal of the license, permit, or certification within ninety (90) days after the end of overseas deployment;

(b) Provides the hiring, licensing, permitting, or certifying authority with a copy of the member's official orders ending the overseas deployment; and

(c) Meets all the requirements necessary for the renewal of the license, permit, or certification, except that the member need not meet the requirements, if any, that relate to continuing education or training.

(3) (a) The possession by a member specified in subsection (1) of this section of a license, permit, or certification, together with orders for overseas deployment, shall constitute a de facto extension of the license, permit, or certification until its expiration pursuant to subsection (1) of this section or until the license, permit, or certificate is

renewed by the hiring, licensing, permitting, or certifying authority, whichever occurs later.

(b) The possession of a license, permit, or certification, together with orders for overseas deployment, shall constitute, during the period specified in paragraph (a) of this subsection, a defense to any charge for possession of an expired license, permit, or certification by the member specified in subsection (1) of this section.

(4) In order to avoid confusion regarding the status of a license, permit, or certification, a service member specified in subsection (1) of this section may provide the hiring, licensing, permitting, or certifying authority a copy of the service member's overseas deployment orders. Upon receipt of the service member's overseas deployment orders, the receiving agency shall indicate the license as extended as provided in this section in the agency's records. Failure of a service member to provide overseas deployment information to the hiring, licensing, permitting, or certifying authority shall have no effect on the automatic extension of the license, permit, or certification or its renewal as provided in this section. No hiring, licensing, permitting, or certifying agency shall take any adverse action with regard to the renewal of the license, permit, or certification of a service member who has been the subject of an overseas deployment and who has not notified the agency of the overseas deployment.

(5) This section shall not apply to a motor vehicle or motorcycle operator's license issued under KRS Chapter 186, a motor vehicle registration issued under KRS Chapter 186, or a commercial driver's license issued under KRS Chapter 281A.

(6) A license to carry a concealed deadly weapon issued pursuant to KRS 237.110 shall not be extended beyond its expiration date. However, a service member specified in subsection (1) of this section may:

(a) Renew a license issued pursuant to KRS 237.110 by requesting an application form from the Department of Kentucky State Police by mail or facsimile, and returning the completed application, photograph, and license fee to the sheriff prior to the expiration date of the license. The request for the application may be submitted not more than six (6) months prior to the expiration date of the license. The Department of Kentucky State Police shall, if the applicants meet the requirements of KRS 237.110, mail the new license directly to the applicant at the active duty military address specified by the applicant and shall send notification to the sheriff who sent in the application that the license has been sent directly to the applicant. No extra charges shall be made for this service; or

(b) Permit the license to expire and upon return to the county of residence, apply for renewal of the license in the same manner as if the license had been renewed in a timely manner prior to its expiration without any extra fees or penalty charges if the renewal is accomplished within one (1) year after the end of the deployment.

(7) The Department of Kentucky State Police shall promulgate administrative regulations to implement the provisions of subsection (6) of this section.

HOUSE BILL 35 – Operator's License Revocation

Section 1. KRS 532.356 is amended to read as follows:

(1) Upon a person's conviction and sentencing for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense, and, for the purposes of paragraph (b) of this subsection, any Class C felony offense listed in subsection (3) of this section, the court shall impose the following sanctions in addition to any imprisonment, fine, court cost, or community service:

(a) Reimbursement to the state or local government for the person's incarceration, determined by the per person, per diem, expenses of each prisoner incarcerated by the respective local government, times the number of days he has spent or shall spend in confinement, plus any medical services received by the prisoner, less copayments paid by the prisoner. The convicted person's ability to pay all or part of the reimbursement shall be considered by the sentencing court in imposing the sanction; and

(b) Restitution to the crime victim as set out in KRS 439.563, 532.032, and 532.033.

(2) In addition to any other penalty allowed by law, a court may declare the defendant ineligible to operate a motor vehicle for a period of up to sixty (60) days where the defendant is being sentenced for a conviction of KRS 514.030 involving the theft of gasoline or special fuels from a retail establishment and the defendant has been previously convicted of KRS 514.030 for a theft of gasoline or special fuels from a retail establishment. A retail establishment may post a sign at the location where the fuel is dispensed apprising the public of the sanctions available under this subsection.

(3) (a) In addition to any other penalty allowed by law, a court ~~may~~shall declare the defendant ineligible to operate a motor vehicle for the period of time that any amount of restitution ordered under this section remains unpaid, where the restitution is imposed as the result of the commission of the following offenses:

1. KRS 434.650;
2. KRS 434.655;
3. KRS 434.660;
4. KRS 434.670;
5. KRS 434.690;
6. KRS 514.030;
7. KRS 514.040;
8. KRS 514.050;
9. KRS 514.060;
10. KRS 514.070;
11. KRS 514.080;
12. KRS 514.090;
13. KRS 514.110;
14. KRS 514.120; or
15. KRS 506.120.

(b) Upon motion by the defendant with proper notice to the office of the attorney who represented the Commonwealth at sentencing, the court may authorize the defendant to obtain the hardship license authorized under KRS Chapter 189A. The defendant shall be subject to the same operating restrictions and penalties for noncompliance as are set out for a hardship license in that chapter. The court may waive compliance with provisions of KRS Chapter 189A relating to alcohol treatment,

waiting periods, and ignition interlock installation for the purpose of authorizing issuance of a hardship license under this section.

(4) Sanctions imposed by the sentencing court shall become a judgment of the court. Reimbursement of incarceration costs shall be paid by the defendant directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.

HOUSE BILL 79 – Golf Carts

Section 1. KRS 189.286 is amended to read as follows:

(1) As used in this section:

(a) "Golf cart" means any self-propelled vehicle that:

1. Is designed for the transportation of players or maintaining equipment on a golf course, while engaged in the playing of golf, supervising the play of golf, or maintaining the condition of the grounds on a golf course;
2. Has a minimum of four (4) wheels;
3. Is designed to operate at a speed of not more than thirty-five (35) miles per hour;
4. Is designed to carry not more than six (6) persons, including the driver;
5. Has a maximum gross vehicle weight of two thousand five hundred (2,500) pounds;
6. Has a maximum rated payload capacity of one thousand two hundred (1,200) pounds; and
7. Meets the federal motor vehicle safety standards for low-speed vehicles set forth in 49 C.F.R. sec. 571.500; and

(b) "Local government" means a city, county, charter county government, urban-county government, consolidated local government, unified local government, or special district.

(2) The governing body of a local government may authorize and regulate the operation of a golf cart on any public roadway under its jurisdiction ~~[that lies within five (5) road miles of an entrance to a golf course]~~ if the local government adopts an ordinance specifying each roadway that is open for golf cart use.

(3) An ordinance created under subsection (2) of this section shall require that a golf cart operated on a designated public roadway:

- (a) Be issued a permit for the golf cart by the local government;
- (b) Display a sticker or permit that identifies that the golf cart is allowed to be operated on specific roadways within the local government; and
- (c) Be inspected by a certified inspector designated by the county sheriff and certified through the Department of Vehicle Regulation to ensure that the golf cart complies with the requirements of this section. The inspection fee under this paragraph shall not exceed five dollars (\$5) with an additional fee not to exceed ten dollars (\$10) per trip charged if it becomes necessary for the certified inspector to travel to the site of the golf cart rather than having the golf cart brought to the sheriff's inspection area.

(4) A person may operate a golf cart on a public roadway pursuant to subsection (2) of this section if:

- (a) The posted speed limit of the designated public roadway is thirty-five (35) miles per hour or less;
 - (b) The operator of the golf cart does not cross a roadway at an intersection where the roadway being crossed has a posted speed limit of more than thirty-five (35) miles per hour;
 - (c) The operator has a valid operator's license in his or her possession;
 - (d) The golf cart is being operated between sunrise and sunset; and
 - (e) The golf cart displays a slow-moving vehicle emblem in compliance with KRS 189.820.
- (5) A golf cart operating on a public roadway under subsection (2) of this section shall be insured in compliance with KRS 304.39-080 by the owner or operator, and the proof of insurance shall be inside the golf cart at all times of operation on a public roadway.
- (6) Any person operating a golf cart on a public roadway under the provisions of this section shall be subject to the traffic regulations of KRS Chapter 189.
- (7) A golf cart operating on a public roadway designated by a local government under subsection (2) of this section is not considered to be motor a vehicle and is exempt from:
- (a) Title requirements of KRS 186.020;
 - (b) Vehicle registration requirements of KRS 186.050; and
 - (c) Emissions compliance certificates pursuant to KRS 224.20-720.
- (8) A local government may adopt more stringent local ordinances governing golf cart safety equipment and operation than specified in this section.
- (9) The Transportation Cabinet may prohibit the operation of a golf cart on a public roadway designated under subsection (2) of this section that crosses a state-maintained highway under its jurisdiction if it determines that such prohibition is necessary in the interest of public safety.
- (10) The provisions of this section shall not apply to a golf cart that is not used on a public roadway except to cross a roadway while following a golf cart path on a golf course.

HOUSE BILL 216 – FOP License Plates

Section 1. KRS 186.162 is amended to read as follows:

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, and 186.174:
 - (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;
 - (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license

plate that is dedicated for use by a county clerk; and

(e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.

(2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:

* * * * *

(k) Fraternal Order of Police:

1. Initial Fee: ~~\$45~~[\$40] (\$37 SF/\$3 CF/\$5 EF to the Kentucky FOP Death Benefit Fund[\$0 EF]).
2. Renewal Fee: ~~\$25~~[\$15] (\$12 SF/\$3 CF/\$10 EF to the Kentucky FOP Death Benefit Fund[\$0 EF]).

HOUSE BILL 251 – Stray Large Animals

SECTION 1. A NEW SECTION OF KRS CHAPTER 259 IS CREATED TO READ AS FOLLOWS:

KRS 259.105 Definitions for chapter.

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Local government" means any city, county, urban-county, charter county, consolidated local government, or unified local government;

(2) "Stray cattle" means any animal of the bovine, ovine, porcine, or caprine species for which the owner is no longer claiming ownership or for which the owner cannot be determined, but not including any member of the equine species; and

(3) "Stray equine" means any animal of the equine species for which the owner is no longer claiming ownership or for which the owner cannot be determined.

Section 2. KRS 259.110 is amended to read as follows:

~~A[(1)]~~ stray ~~equine~~[cattle] may be taken up and posted by any person or entity if it is found running at large outside of its enclosure or if it can be determined from the circumstances that its owner has abandoned it. Stray cattle may be taken up and posted by any freeholder by legal or equitable title or by a tenant of an unexpired lease for not less than three (3) years when found on his place of residence.

~~[(2) Stray horses, mules, jacks or jennets may be posted at any time of the year. Other stray cattle shall not be taken up or posted between April 1 and November 1 unless they are taken within the inclosure of the taker up, after they have broken into it.]~~

Section 3. KRS 259.120 is amended to read as follows:

Stray equines and stray cattle[Strays] shall be taken up and posted in the following manner:

(1) ~~[[If a]Stray equines[over two (2) years old is taken up, it] shall be taken before a justice of the peace of the district, who shall administer to the taker-up an oath, in substance, that the equine[animal] was taken up by him as a stray[on his premises within the preceding ten (10) days] and that he has not defaced or altered the marks or brands of the equine[animal]. Stray cattle shall be taken before a justice of the peace of the district, who shall administer to the taker-up an oath, in substance that the cattle were taken by him as strays on his premises within the preceding ten (10) days and that he has not defaced or altered the marks or brands of the cattle. The justice shall then value the stray equine or cattle himself and take a correct description of the flesh-marks, age and brands of the same, all of which, together with the name and residence of the taker-up, he shall record in a book to be kept by him for that purpose. He shall give to the taker-up a copy of the record and deliver to the county clerk a certified copy of the same record within thirty (30) days[, for the whole of which service he shall be paid by the taker-up fifty cents (\$0.50)].~~

(2) ~~The clerk shall immediately record the stray certificate of the justice in a book to be kept by him for that purpose[, and he shall cause a true copy of the certificate to be posted at the door of the courthouse at the next two (2) succeeding court days of his county]. His fee for this service shall be seventy-five cents (\$0.75) to be paid by the taker-up.~~

(3) ~~The taker-up shall cause to be posted a copy of the justice's certificate in the sheriff's office with jurisdiction over the area where the stray cattle or stray equine was taken up[, within one (1) month after he has posted the stray[, cause to be published pursuant to KRS Chapter 424, a copy of the justice's certificate].~~

(4) ~~[[If the stray is under two (2) years old the justice shall, in addition to the oath required by subsection (1), take, on the oath of the taker-up, a description of the stray and also the oath of some honest housekeeper of the value of the stray, and proceed as directed by subsection (1) when the stray is over two (2) years old.~~

(5) ~~—]The taker-up shall be paid by the owner of the stray, if and when he claims the stray or its value, the fee[fees] paid the[justice and] clerk[, the cost of advertising] and the actual costs incurred by the taker-up for keeping the stray equine or cattle. The taker-up may have the stray equine gelded, in which case the owner shall also pay the taker-up for the actual cost incurred for the gelding[also a reasonable sum for keeping the stray, where the animal has not been used. The owner shall also pay the taker-up a fee of one dollar (\$1) for each horse, mule, jack or jennet, and twenty five cents (\$0.25) for any other stray posted].~~

Section 4.. KRS 259.130 is amended to read as follows:

The absolute ownership of a stray equine[horse, mule, jack or jennet] shall vest in the taker-up at the expiration of ninety (90) days[two (2) years] after the justice has received the evidence of the valuation and administered the oath to the taker-up. The absolute ownership of[other] stray cattle shall vest in the taker-up after the expiration of twelve (12) months from the day on which the cattle have been posted.

Section 5. KRS 259.140 is amended to read as follows:

(1) If stray equines or cattle taken up under KRS 259.120 are sold for a profit before absolute ownership of the stray equines or stray cattle has vested in the

taker-up as provided by KRS 259.130, then the taker-up~~[of any stray cattle]~~ shall pay to the owner upon demand and proof of ownership the amount received for the stray equine or stray cattle less the amount owed by the owner to the taker-up under Section 3 of this Act. The owner shall not be entitled to any payment from the taker-up under this section if demand for payment is made more than ninety (90) days after the posting of the stray equine or more than twelve (12) months after the posting of the stray cattle under KRS 259.120~~[the valuation of the stray, if it is a horse, jack, jennet or mule, upon proof of his right to payment, at any time within three (3) years from the day the right of property in the stray vests in the taker-up. The valuation of all other stray cattle shall be paid in the same manner, upon proof of ownership, at any time within one (1) year after the right of property is vested in the taker-up. If the stray dies or escapes from the possession of the taker-up before the owner claims the same, he need not pay the valuation or account for the stray. The proof of death or escape shall rest upon the taker-up].~~

(2) Justices of the peace, county clerks, and all other local government employees acting in good faith in the discharge of the duties imposed by KRS 259.105 to KRS 259.140 shall be immune from criminal and civil liability for any act related to the taking up and posting of stray equines or stray cattle.

Section 6. KRS 259.990 is amended to read as follows:

(1) ~~[Any person who violates any of the provisions of KRS 259.110 to 259.140 shall be fined ten dollars (\$10).~~

(2) ~~Any person who violates KRS 259.150 shall be fined fifty dollars (\$50).~~

(3) ~~Any person who violates KRS 259.200 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), and each head of cattle trespassing shall constitute a separate offense.~~

~~(2)(4)~~ Any person who violates KRS 259.210 shall be fined not less than five dollars (\$5) nor more than twenty-five dollars (\$25).

Section 7. The following KRS sections are repealed:

259.150 Altering marks, removal and destruction of strays prohibited.

259.160 Horse, jack or bull running at large may be taken up -- Notice when owner known.

259.170 Animal taken up to be gelded.

259.180 Owner of animal unknown -- Notice -- Gelding.

259.190 Fees of taker-up -- Property vests in taker-up, when -- Recovery by owner.

HOUSE BILL 262 – Commercial Vehicle Inspectors

Section 1. KRS 189.227 is amended to read as follows:

(1) The Department of Highways may take such actions, and may~~[prescribe and]~~ promulgate administrative~~[such rules and]~~ regulations in accordance with KRS Chapter 13A, as are necessary and proper to carry out the purposes of KRS 189.221 to 189.228, including, but not limited to, the erection, establishment, and maintenance of permanent or portable scales.

(2) The Department of Kentucky State Police~~[Said department]~~ is~~[also]~~

authorized to employ **commercial motor vehicle inspectors**~~[weighmasters]~~ and such other employees as may be necessary to operate any scales erected or established, and **commercial motor vehicle inspectors employed under this section**~~[said weighmasters]~~ shall have the authority of peace officers for the purpose of enforcing KRS 189.221 to 189.228, and other statutes relating to motor vehicles, and for no other purpose. ~~A[No]~~ previous period of residence within the county **of service**~~[where he is to serve]~~ shall **not** be required of any peace officer appointed under this section.

Section 2. KRS 281.755 is amended to read as follows:

(1) The Department of Kentucky State Police **or any other peace officer designated by the department** may at any time or place make an inspection of any motor vehicle operating under the provisions of this chapter. They may enter into and upon any such motor vehicle for the purpose of ascertaining whether or not any provision of this chapter or any order or rule or regulation of the department relating to such motor vehicles has been violated. Willful refusal to stop any such motor vehicle, when ordered to do so by any representative of the Department of Kentucky State Police, or to permit the representative to enter into or upon the motor vehicle for the purpose of inspection, shall be sufficient ground for the revocation or suspension of the certificate or permit of the motor carrier.

(2) In the event that a peace officer orders a commercial motor vehicle to be taken to a storage or impoundment facility as a result of a violation which requires the vehicle to be moved, the driver of the commercial motor vehicle shall be granted the ability to drive the commercial motor vehicle to the storage or impoundment facility. If the driver elects to drive to the storage or impoundment facility, a peace officer shall escort the vehicle to the facility. This subsection shall not apply if the commercial motor vehicle is required to be impounded as a result of a violation of KRS 281A.210, an out-of-service order as defined in KRS 281A.010(26), or a serious traffic violation as defined in KRS 281A.010(29).

Section 3. Section 2 of this Act shall apply retroactively, but shall not be construed to permit the prosecution of a person whose vehicle was inspected by a peace officer who did not, prior to the effective date of this Act, have the authority to perform inspections under KRS Chapter 281.

HOUSE BILL 265 - Prohibition on Synthetic Cannabinoid Agonists and Piperazines – Also impacts current DUI law

**EMERGENCY LEGISLATION
(with the exception of Sections 17-24)**

SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1436 Trafficking in synthetic cannabinoid agonists or piperazines – Penalty

(1) A person is guilty of trafficking in synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully traffics in synthetic

cannabinoid agonists or piperazines.

(2) Trafficking in synthetic cannabinoid agonists or piperazines is a Class A Misdemeanor.

SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1427 Possession of synthetic cannabinoid agonists or piperazines – Penalty.

(1) A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.

(2) Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor.

SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

KRS 218A.1428 Manufacture of synthetic cannabinoid agonists or piperazines – Penalty

(1) A person is guilty of synthetic cannabinoid agonists or piperazines manufacture when he or she knowingly manufactures synthetic cannabinoid agonists or piperazines.

(2) Synthetic cannabinoid agonists or piperazines manufacture is a Class A misdemeanor.

Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

* * * * *

(35) "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; or 2-[1-(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;

Section 5. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

* * * * *

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxymphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-

trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone); **synthetic cannabinoid agonists or piperazines**.

Section 6. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
 - (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and
 - (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, **synthetic cannabinoid agonists or piperazines**, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";

* * * * *

Section 7. KRS 218A.1401 is amended to read as follows:

- (1) A person is guilty of selling controlled substances to a minor when he, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance **other than synthetic cannabinoid agonists or piperazines** to any person under eighteen (18) years of age.
- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

Section 8. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, **trafficking in synthetic cannabinoid agonists or piperazines**, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

Section 9. KRS 218A.1411 is amended to read as follows:

(1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

(2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines.

Section 10. KRS 218A.1413 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

- (a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, **synthetic cannabinoid agonists or piperazines**, or marijuana; or
- (b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

(2) Any person who violates the provisions of subsection (1) of this section shall:

- (a) For the first offense be guilty of a Class D felony.
- (b) For a second or subsequent offense be guilty of a Class C felony.

Section 11. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree

when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, **synthetic cannabinoid agonists or piperazines**, or marijuana.

(2) Possession of a controlled substance in the second degree is:

(a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

Section 12. KRS 218A.276 is amended to read as follows:

(1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 **or possession of synthetic cannabinoid agonists or piperazines pursuant KRS 218A.1427** may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.

(2) The secretary of the Cabinet for Health and Family Services, or his designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.

(3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.

(4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.

(5) The secretary of the Cabinet for Health and Family Services, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.

(6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.

(7) None of the provisions of this chapter shall be deemed to preclude the court from

exercising its usual discretion with regard to ordering probation or conditional discharge.

(8) In the case of any person who has been convicted of possession of marijuana **or possession of synthetic cannabinoid agonists or piperazines**, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

Section 13. KRS 218A.410 is amended to read as follows:

(1) The following are subject to forfeiture:

* * * * *

(h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;
4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana **or synthetic cannabinoid agonists or piperazines**.

(i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of

personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.

(k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana **or synthetic cannabinoid agonists or piperazines**, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

* * * * *

Section 14. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

(1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.

(2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(5) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor~~for the first offense and a Class D felony for subsequent offenses~~.

Section 15. KRS 218A.992 is amended to read as follows:

(1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:

(a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or

(b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.

(2) The provisions of this section shall not apply to a violation of KRS 218A.210 or KRS 218A.1436, KRS 218A.1427 or KRS 218A.1428.

Section 16. KRS 530.064 is amended to read as follows:

(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

(a) Illegal sexual activity; or

- (b) Illegal controlled substances activity other than activity involving marijuana **or synthetic cannabinoid agonists or piperazines as defined in KRS 218A.010(35);**

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

- (2) Unlawful transaction with a minor in the first degree is a:
 - (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) Class A felony if the minor so used incurs physical injury thereby.

Section 17. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

- (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
- (b) While under the influence of alcohol;
- (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
- (d) **While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;**

(e) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

(f)(e) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).

- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or **(f)(e)** of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or **(e)(d)** of this section.

- (3) In any prosecution for a violation of subsection (1)(b) or **(e)(d)** of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:

- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and

(b) If there was an alcohol concentration of 0.05 or greater but less than 0.08 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or ~~(e)(d)~~ of this section.

(4) **(a) Except as provided in paragraph (b) of this subsection,** the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.

(b) A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.

(5) Any person who violates the provisions of paragraph (a), (b), (c), ~~(d)~~, **or (e)** of subsection (1) of this section shall:

(a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

(b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

(c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not

be suspended, probated, conditionally discharged, or subject to any other form of early release.

(d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.

(e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state or jurisdiction, for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(~~f~~)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.

(6) Any person who violates the provisions of subsection (1)(~~f~~)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).

(7) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.08 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (5) of this section.

(8) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.

(9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.

(10) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

(11) For purposes of this section, aggravating circumstances are any one (1) or more of the following:

(a) Operating a motor vehicle in excess of thirty (30) miles per hour above the speed limit;

(b) Operating a motor vehicle in the wrong direction on a limited access highway;

(c) Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;

- (d) Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is 0.15~~[0.18]~~ or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;
- (e) Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and
- (f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.

(12) The substances applicable to a prosecution under subsection (1)(d) of this section are:

- (a) Any Schedule I controlled substance except marijuana;**
(b) Alprazolam;¹
(c) Amphetamine;²
(d) Buprenorphine;³
(e) Butalbital;⁴
(f) Carisoprodol;⁵
(g) Cocaine;
(h) Diazepam;⁶
(i) Hydrocodone;⁷
(j) Meprobamate;⁸
(k) Methadone;
(l) Methamphetamine;
(m) Oxycodone;
(n) Promethazine;⁹
(o) Propoxyphene;¹⁰ and
(p) Zolpidem.¹¹

Section 18. KRS 189A.040 is amended to read as follows:

(1) In addition to any other penalty prescribed by KRS 189A.010(5)(a) or (6), the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender or a person convicted under KRS 189A.010(1)~~(f)~~~~(e)~~:

(a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program;

¹ Includes Xanax, among others.

² Includes Adderall, among others.

³ Includes Burprenex, Suboxonel and Subutex, among others.

⁴ Includes Fioricet and Esgic, among others.

⁵ Soma

⁶ Valium

⁷ Includes Lortab and Vicodin, among others

⁸ Includes Milltown and Equanil, among others.

⁹ Phenergan

¹⁰ Darvocet

¹¹ Includes Ambien, among others.

- (b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment;
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant shall be released prior to the expiration of the ninety (90) day period; and
 - (d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.
- (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:
- (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program;
 - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment;
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period; and
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.
- (3) In addition to any other penalty prescribed by KRS 189A.010(5)(c) or (d), the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:
- (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential-type program;
 - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program;
 - (c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period; and
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.

Section 19. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d),~~ or (e) shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375), which shall be in addition to all other penalties authorized by law.

* * * * *

Section 20. KRS 189A.070 is amended to read as follows:

(1) Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d),~~ or (e) shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:

(a) For the first offense within a five (5) year period, for a period of not less than thirty (30) days nor more than one hundred twenty (120) days;

(b) For the second offense within a five (5) year period, for a period of not less than twelve (12) months nor more than eighteen (18) months;

(c) For a third offense within a five (5) year period, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and

(d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.

(e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(5)(e).

(2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

(3) In addition to the period of license revocation set forth in subsection (1) or (7) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.

(4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d),~~ or (e) shall have his license revoked by the court until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (1) or (7) of this section, whichever penalty will result in the longer period of revocation or court-ordered driving conditions.

(5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.

(6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.

(7) A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of this section may move the court to reduce the applicable minimum period of revocation by one-half (1/2), but in no case less than twelve (12) months. The court may, upon a written finding in the record for good cause shown, order such a period to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the

following conditions are satisfied:

- (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the applicable minimum period of revocation provided for under subsection (1)(b), (c), or (d) of this section nor for more than the respective maximum period of revocation provided for under subsection (1)(b), (c), or (d) of this section.
- (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of this section or of the order permitting any reduction in a minimum period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the minimum period of revocation required under subsection (1)(b), (c), or (d) of this section.

Section 21. KRS 189A.085 is amended to read as follows:

- (1) Unless the court orders installation of an ignition interlock device under KRS 189A.340, upon the conviction of a second or subsequent offense of KRS 189A.010, a person shall have the license plate or plates on all of the motor vehicles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:
- (a) At the final sentencing hearing, the person who has been convicted of a second or subsequent offense of KRS 189A.010(1)(a), (b), (c), ~~or~~ (d), or (e) shall physically surrender any and all license plate or plates currently in force on any motor vehicle owned either individually or jointly by him or her to the court. The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the motor vehicle operator's license of the second or subsequent offender as specified in KRS 189A.070.
 - (b) The clerk of the court shall retain any surrendered plate or plates and transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.
- (2) Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any vehicle owned by the second or subsequent offender. Hardship exceptions may be granted by the court to the second or subsequent offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered vehicles would pose an undue hardship upon the family members or affected other individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the vehicles of the second or subsequent offender for their utilization. The second or subsequent offender shall not be permitted to operate a vehicle for which the license plate has been suspended or for which a hardship exception has been granted under any circumstances.

- (3) If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.
- (4) If the license plate of a motor vehicle is impounded, the vehicle may be transferred.

Section 22. KRS 189A.090 is amended to read as follows:

- (1) No person shall operate or be in physical control of a motor vehicle while his license is revoked or suspended under KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of KRS 189A.345(1).
- (2) In addition to any other penalty imposed by the court, any person who violates subsection (1) of this section shall:
 - (a) For a first offense within a five (5) year period, be guilty of a Class B misdemeanor and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e), in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;
 - (b) For a second offense within a five (5) year period, be guilty of a Class A misdemeanor and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;
 - (c) For a third or subsequent offense within a five (5) year period, be guilty of a Class D felony and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.
- (3) The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- (4) After one (1) year of the period of revocation provided for in subsection (2)(b) or (c) of this section has elapsed, a person whose license has been revoked pursuant to either of those subsections may move the court to have an ignition interlock device installed for the remaining portion of the period of revocation. The court may, upon a written finding in the record for good cause shown, order an ignition interlock device installed if the following conditions are satisfied:
 - (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.
- (5) Upon a finding of a violation of any of the conditions specified in subsection (4) of

this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.

Section 23. KRS 189A.105 is amended to read as follows:

(1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his driving privilege as provided in this chapter.

(2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:

1. That, if the person refuses to submit to such tests, the fact of this refusal may be used against him in court as evidence of violating KRS 189A.010 and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license; and

2. That, if a test is taken, the results of the test may be used against him in court as evidence of violating KRS 189A.010(1), and that if the results of the test are 0.15~~[0.18]~~ or above and the person is subsequently convicted of violating KRS 189A.010(1), then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence imposed if the results are less than 0.15~~[0.18]~~; and

3. That if the person first submits to the requested alcohol and substance tests, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.

(b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating peace officer shall seek such a search warrant for blood, breath, or urine testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged with and convicted of an offense arising from the accident, the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.

(3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney and shall be informed of this right. Inability to communicate with an attorney during this period

shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.

(4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

Section 24. KRS 189A.240 is amended to read as follows:

In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the court determines by a preponderance of the evidence that:

(1) The person was charged and arrested by a peace officer with a violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e);

(2) The peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e);

(3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e) as charged; and

(4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(e) or has had his motor vehicle operator's license suspended or revoked on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest, then the court shall continue to suspend the person's operator's license or privilege to operate a motor vehicle. The provisions of this section shall not be construed as limiting the person's ability to challenge any prior convictions or license suspensions or refusals.

Section 25. Whereas synthetic cannabinoid agonists and piperazines are dangerous substances that are currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of these substances immediately in an effort to prevent stockpiling of them by individuals for future use, an emergency is declared to exist, and Sections 1 to 16 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

HOUSE BILL 285 – Pediatric Head Trauma

Section 2. KRS 15.334 is amended to read as follows:

(1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:

(a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;

(b) The dynamics of domestic violence, **pediatric abusive head trauma, as defined in KRS 620.020(8)**, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, **pediatric abusive head trauma, as defined in KRS 620.020(8)**, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. **Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;**

(c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome; and

(d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin.

(2) **(a)** The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.

(b) Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

(3) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.

(4) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

KRS 158.303 Educational segment on prevention of pediatric abusive head trauma encouraged.

Kentucky schools are encouraged to include a segment concentrating on the prevention of pediatric abusive head trauma, as defined in KRS 620.020(8), during

a student's final year of study at Kentucky high schools. Important areas of concentration for this segment would include information related to the prevention and recognition of pediatric abusive head trauma. This segment should also suggest methods of calming crying infants, techniques for caregivers to use to calm themselves when confronted with an infant that is crying inconsolably, and a discussion relating to selecting responsible care providers for infant children.

Section 4. KRS 194A.545 is amended to read as follows:

(1) The secretary for health and family services shall develop an initial training course and continuing education courses for employees of the Department for Community Based Services concerning the dynamics of domestic violence and elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence; available community resources and victim services; and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.

(2) Each person employed by the Department for Community Based Services who provides supervisory or direct service at the local, district, or state level shall successfully complete the initial training course and, at least once every two (2) years, the continuing education course developed under subsection (1) of this section.

(3) The secretary is encouraged to include an educational component covering the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8), as part of the initial training and continuing education for Department for Community Based Services front-line child protection staff.

SECTION 5. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

KRS 197.057 Course for inmates on prevention of pediatric abusive head trauma.

(1) The department shall make available a one and one-half (1.5) hour course for inmates that addresses the prevention of pediatric abusive head trauma, as defined in KRS 620.020(8). In addition to presenting the consequences of vigorously shaking an infant or young child, this course shall suggest methods of calming crying infants, techniques for caregivers to use to calm themselves when confronted with an infant that is crying inconsolably, and discuss selecting appropriate care providers for infant children. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services.

(2) The department shall encourage local jails to provide a course similar to that described in subsection (1) of this section.

SECTION 6. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS

FOLLOWS:

KRS 199.464 Course for foster parents on prevention and recognition of pediatric abusive head trauma.

(1) A foster parent who receives a child younger than the age of five (5) years for placement shall undergo a one and one-half (1.5) hour continuing education session one (1) time every five (5) years covering the prevention and recognition of pediatric abusive head trauma as defined in KRS 620.020(8). A current qualifying foster parent shall demonstrate completion of this educational session by December 31, 2013.

(2) The educational session required in this section shall address risk factors related to pediatric abusive head trauma, and the methods to reduce the risk of pediatric abusive head trauma in the foster or adoptive home. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services.

(3) The Cabinet for Health and Family Services may promulgate an administrative regulation to implement this section.

Section 7. KRS 199.896 is amended to read as follows:

* * * * *

(16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development. **These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8). Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric head trauma approved by the secretary of the Cabinet for Health and Family Services The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.**

Section 8. KRS 199.8982 is amended to read as follows:

* * * * *

(2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development. **These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8). Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services. The one and one-half (1.5) hours of continuing**

education required under this section shall be included in the current number of required continuing education hours.

(3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.

Section 9. KRS 211.690 is amended to read as follows:

(1) There is established within the Cabinet for Health and Family Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday. The HANDS program recognizes that parents are the primary decision-makers for their children. The goals of the HANDS program are to:

- (a) Facilitate safe and healthy delivery of babies;
- (b) Provide information about optimal child growth and human development;
- (c) Facilitate the safety and health of homes; and
- (d) Encourage greater self-sufficiency of families.

(2) The cabinet shall administer the HANDS program in cooperation with the Cabinet for Health and Family Services and the local public health departments. The voluntary home visitation program may supplement, but shall not duplicate, any existing program that provides assistance to parents of young children.

(3) The HANDS program shall include an educational component on the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8).

~~(4)(3)~~ Participants in the HANDS program shall express informed consent to participate by written agreement on a form promulgated by the Cabinet for Health and Family Services.

SECTION 10. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

KRS 216B.405 Course on recognition and prevention of pediatric abusive head trauma to be given by urgent treatment facility and urgent care facility.

(1) As used in this section, "urgent treatment facility" or "urgent care facility" means a facility that delivers medically necessary ambulatory medical care apart from a hospital emergency department setting usually on a walk-in basis.

(2) All urgent treatment or urgent care facilities shall make available at least one (1) time every two (2) years a continuing education course relating to the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8). Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services.

Section 11. KRS 311.844 is amended to read as follows:

- (1) To be licensed by the board as a physician assistant, an applicant shall:
 - (a) Submit a completed application form with the required fee;
 - (b) Be of good character and reputation;
 - (c) Be a graduate of an approved program; and
 - (d) Have passed an examination approved by the board within three (3) attempts.
- (2) A physician assistant who is authorized to practice in another state and who is in good standing may apply for licensure by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth.
- (3) A physician assistant's license shall be renewed upon fulfillment of the following requirements:
 - (a) The holder shall be of good character and reputation;
 - (b) The holder shall provide evidence of completion during the previous two (2) years of a minimum of one hundred (100) hours of continuing education approved by the American Medical Association, the American Osteopathic Association, the American Academy of Family Physicians, the American Academy of Physician Assistants, or by another entity approved by the board;
 - (c) The holder shall provide evidence of completion of a continuing education course on the human immunodeficiency virus and acquired immunodeficiency syndrome in the previous ten (10) years that meets the requirements of KRS 214.610;
 - (d) As a part of the continuing education requirements that the board adopts to ensure continuing competency of present and future licensees the board shall ensure that physician's assistants shall demonstrate completion of a one-time training course of one and one-half (1.5) hours of training covering the prevention and recognition of pediatric abusive head trauma, as defined in KRS 620.020(8). The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours. Current practicing physician's assistants shall demonstrate completion of this course by December 31, 2013;** and
 - (e)(d)** The holder shall provide proof of current certification with the National Commission on Certification of Physician Assistants.

Section 12. KRS 311A.120 is amended to read as follows:

- (1)** As a condition of being issued a certificate or license as an emergency medical technician or first responder, the applicant shall have completed a Kentucky Board of Emergency Medical Services approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change. The board shall require continuing education that updates this training at least one (1) time every ten (10) years that is consistent with and as required for other health care providers under KRS 214.610.
- (2) The board shall require continuing education for emergency medical technicians or first responders that includes the completion of one and one-half**

(1.5) hours of board approved continuing education covering the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8), at least one (1) time every five (5) years. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

SECTION 13. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

KRS 311A.127 Course for paramedics on recognition and prevention of pediatric abusive head trauma.

The board shall require continuing education for paramedics that includes the completion of one and one-half (1.5) hours of board approved continuing education covering the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8), at least one (1) time every five (5) years. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

Section 14. KRS 314.073 is amended to read as follows:

* * * * *

(7) As a part of the continuing education requirements that the board adopts to ensure continuing competency of present and future licensees, the board shall ensure practitioners licensed under KRS Chapter 314 complete a one-time training course of at least one and one-half (1.5) hours covering the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8). The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours. Current practicing nurses shall demonstrate completion of this course by December 31, 2013.

(8)(7) In order to offset administrative costs incurred in the implementation of the mandatory continuing competency requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.

(9)(8) The continuing competency requirements shall include at least five (5) contact hours in pharmacology continuing education for any person registered as an advanced registered nurse practitioner.

Section 15. KRS 335.130 is amended to read as follows:

(1) Each certified social worker, licensed social worker and licensed clinical social worker shall renew his license every three (3) years, and shall pay the board a renewal fee as established by the board by promulgation of an administrative regulation.

(2) Licensees whose licenses are renewed by the board shall be issued a renewal license.

(3) Renewal fees shall be waived for any licensee actually serving in the Armed Forces of the United States. The waiver shall be effective for six (6) months following honorable discharge, separation, or release from the Armed Forces, after which period a license shall be considered lapsed.

(4) The board may, at its discretion, require continuing education as a condition of license renewal.

(5) If the board requires continuing education as authorized in subsection (4), the continuing education requirements for each licensed social worker and each licensed clinical social worker shall include one and one-half (1.5) hours of continuing education approved by the board and covering the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020(8), at least one (1) time every six (6) years. The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours.

Section 16. KRS 620.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

* * * * *

(8) "Pediatric abusive head trauma" means the various injuries or conditions that may result following the vigorous shaking, slamming, or impacting the head of an infant or young child. These injuries or conditions, also known as pediatric acquired abusive head trauma, have in the past been called "Shaken Baby Syndrome" or "Shaken Infant Syndrome." Pediatric abusive head trauma injuries or conditions have included, but are not limited to the following:

(a) Irreversible brain damage;

(b) Blindness;

(c) Retinal hemorrhage;

(d) Eye damage;

(e) Cerebral palsy;

(f) Hearing loss;

(g) Spinal cord injury;

(h) Paralysis;

(i) Seizures;

(j) Learning disability;

(k) Death;

(l) Central nervous system injury as evidenced by central nervous system hemorrhaging;

(m) Closed head injury;

(n) Rib fracture; and

(o) Subdural hematoma;

(remaining sections are renumbered)

HOUSE BILL 316 – Administration of Oaths

Section 1. KRS 62.020 is amended to read as follows:

(1) The official oath of any officer may be administered by:

(a) Any **active, retired, or senior status justice or judge of the Court of**

Justice^[state] or active, retired, or senior status federal judge, with Kentucky jurisdiction;

* * * * *

HOUSE BILL 415 - Texting

SPECIAL EFFECTIVE DATE – SEE SECTION 4

Section 1. KRS 216.712 is amended to read as follows:

* * * * *

(7) Each personal services agency providing direct care to clients shall have a policy that addresses the acceptance of personal gifts, gratuities, or loans from a client by the agency and by any employee, agent, or contractor of the personal services agency. The policy shall not be required to apply to personal gifts, gratuities, or loans to the agency made by family members or friends of the client. The policy shall, at a minimum:

(a) Prohibit the solicitation of personal gifts, gratuities, or loans from a client; and

(b) Specify the conditions under which gifts, gratuities, or loans from a client may be accepted by the agency and by any employee, agent, or contractor of the personal services agency.

SECTION 2. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

KRS 189.292 Use of personal communication device prohibited while operating motor vehicle in motion on traveled portion of roadway - Exclusions.

(1) As used in this section, "personal communication device" means a device capable of two (2) way audio or text communication that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers communication to the possessor, including but not limited to a paging device and a cellular telephone.

(2) Except as provided in subsection (3) of this section, no person shall, while operating a motor vehicle that is in motion on the traveled portion of a roadway, write, send, or read text-based communication using a personal communication device to manually communicate with any person using text-based communication, including but not limited to communications referred to as a text message, instant message, or electronic mail.

(3) Subsection (2) of this section shall not apply to:

(a) The use of a global positioning system feature of a personal communication device;

(b) The reading, selecting, or entering of a telephone number or name in a personal communication device for the purpose of making a phone call;

(c) An operator of an emergency or public safety vehicle, when the use of a personal communication device is an essential function of the operator's official

duties; or

(d) The operator of a motor vehicle who writes a text message on a personal communication device to:

1. Report illegal activity;
2. Summon medical help;
3. Summon a law enforcement or public safety agency; or
4. Prevent injury to a person or property.

SECTION 3. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

KRS 189.294 Use of personal communication device by minor prohibited while operating motor vehicle, motorcycle or moped in motion on traveled portion of roadway - Exclusions.

(1) As used in this section, "personal communication device" shall have the same meaning as defined in KRS 189.292.

(2) Any person under the age of eighteen (18) who has been issued an instruction permit, intermediate license, or operator's license shall not operate a motor vehicle, motorcycle, or moped that is in motion on the traveled portion of a roadway while using a personal communication device, except to summon medical help or a law enforcement or public safety agency in an emergency situation.

(3) Use of a personal communication device does not include a stand-alone global positioning system or an in-vehicle security, diagnostics, and communications system, but does include manually entering information into the global positioning system feature of a personal communication device.

(4) This section shall not apply to the use of a citizens band radio or an amateur radio by a motor vehicle operator.

Section 4. KRS 189.990 is amended to read as follows:

* * * * *

(30)(a) Prior to January 1, 2011, any person who violates KRS 189.292 or KRS 189.294 shall not be issued a uniform citation, but shall instead receive a courtesy warning.

(b) On or after January 1, 2011, any person who violates KRS 189.292 or KRS 189.294 shall be fined twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each subsequent offense.

Section 5. KRS 186.452 is amended to read as follows:

(1) Except as provided in KRS 186.415, a person who is under eighteen (18) years of age may apply for an intermediate license to operate a motor vehicle if the person has:

(a) Held an instruction permit a minimum of one hundred eighty (180) days without a violation under KRS 186.450(4), (5), or (6), a conviction for a violation of KRS 189.292 or KRS 189.294, a conviction for a moving violation under KRS Chapter 189

for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1); and

(b) Presented a statement to the Department of Kentucky State Police signed by a parent or guardian of the applicant attesting that the applicant has completed at least sixty (60) hours of supervised driving experience, including at least ten (10) hours at night, while accompanied by a person who has attained the age of twenty-one (21) years and holds a valid operator's license occupying the seat beside the applicant.

* * * * *

Section 6. KRS 186.454 is amended to read as follows:

(1) Except as provided in KRS 186.415, a person with an intermediate license who is under the age of eighteen (18) years may apply for an operator's license to operate a motor vehicle if the person has:

(a) Held an intermediate license for a minimum of one hundred eighty (180) days without a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, **a conviction for a violation of KRS 189.292 or KRS 189.294**, a conviction for a violation of KRS 189A.010(1), or a conviction under KRS 186.452(3), (4), or (5); and

(b) Completed a driver training program under KRS 186.410(4).

(2) A person with an intermediate license who is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle if the person has completed a driver training program under KRS 186.410(4).

Section 7. Section 1 of this Act shall be known and may be cited as, "The Kentucky Adult Protection Act" in honor of the disabled veterans who revealed the need for this legislation.

HOUSE BILL 428 – Operator's License

Section 1. KRS 186.412 is amended to read as follows:

* * * * *

(1) (a) A person who was under the age of eighteen (18) years at the time of application for an instruction permit and is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days and has completed a driver training program under KRS 186.410(4).

(b) A person who has attained the age of eighteen (18) years and is under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days.

(c) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.

(2) Except as provided in subsection (4) of this section, a person shall apply for an operator's license in the office of the circuit clerk of the county where the person lives. **Except as provided in paragraphs (b) and (c) of subsection (8) of this section,** the application form shall require the person's:

- (a) Full legal name and signature;
- (b) Date of birth;
- (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions;
- (d) Sex;
- (e) Present Kentucky resident address, exclusive of a post office box address alone;
- (f) Other information necessary to permit the application of United States citizens to also serve as an application for voter registration;
- (g) A brief physical description of the applicant;
- (h) A statement if the person has previously been licensed as an operator in another state;
- (i) Proof of the person's Kentucky residency, including but not limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement; and
- (j) Other information the cabinet may require by administrative regulation promulgated under KRS Chapter 13A.

(3) A permanent resident shall present one (1) of the following documents issued by the United States Department of **Homeland Security**~~[Justice]~~, **United States Bureau of Citizenship and Immigration Services**~~[Immigration and Naturalization Service]~~:

- (a) An I-551 card with a photograph of the applicant; or
- (b) A form with the photograph of the applicant or a passport with a photograph of the applicant on which the United States Department of **Homeland Security**~~[Justice]~~, **United States Bureau of Citizenship and Immigration Services**~~[Immigration and Naturalization Service]~~ has stamped the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until ----. Employment authorized."

(4) If the person is not a United States citizen and has not been granted status as a permanent resident of the United States, the person's application for an original operator's license shall be submitted to either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.

- (a) The application form shall be accompanied by the person's documentation issued by the United States Department of **Homeland Security**~~[Justice]~~, **United States Bureau of Citizenship and Immigration Services**~~[Immigration and Naturalization Service]~~, authorizing the person to be in the United States and, if applicable, the person's international driving permit. The application form of a special status individual with a K-1 status shall be accompanied by an original or certified copy of the person's completed marriage license signed by the official who presided over the marriage ceremony and two (2) witnesses. The application form of a special status individual with a K-1 status shall also include the person's petition to enter the United States for the purpose of marriage that contains the name of the prospective spouse. If the name of

the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.

(b) The Transportation Cabinet shall, within fifteen (15) days of receipt of the application, review the person's documentation and determine if the person will be issued a Kentucky operator's license. If the review of an application will take longer than fifteen (15) days, the cabinet shall continue the review, but the cabinet shall be required to make a determination in all cases within thirty (30) days of receipt of the application.

(c) If the cabinet determines the person may be issued an operator's license, the cabinet shall issue the person an official form that the person shall take to the office of the circuit clerk of the county where the person resides. The circuit clerk shall review the person's documentation and the official form issued by the Transportation Cabinet. If the documentation is verified as accurate, and if the person successfully completes the examinations required under KRS 186.480, the circuit clerk shall issue the person a Kentucky operator's license.

(d) Except as provided in paragraphs (e) and (f) of this subsection, a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States shall apply to renew an operator's license, or obtain a duplicate operator's license, in the office of the circuit clerk in the county in which the person resides.

(e) If a person is renewing an operator's license or is applying for a duplicate license after July 15, 2002, and the person's documentation issued by the United States Department of Homeland Security~~(Justice)~~, United States Bureau of Citizenship and Immigration Services~~(Immigration and Naturalization Service)~~, has not been reviewed by the either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office under the provisions of this subsection, the person shall be required to apply for the renewal or duplicate with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.

(f) If a person has any type of change in the person's immigration status, the person shall apply to renew an operator's license with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.

(5) The circuit clerk shall issue an operator's license bearing a color photograph of the applicant and other information the cabinet may deem appropriate. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. If an applicant does not have a Social Security number, or the applicant has submitted a notarized affidavit refusing to divulge his or her Social Security number based upon religious convictions, the

Transportation Cabinet shall assign the applicant a unique identifying number. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).

(6) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.

(7) (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.

(b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.

(c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).

(d) A personal identification card shall be valid for a period of four (4) years from the date of issuance. Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of ~~Homeland Security~~Justice, ~~United States Bureau of Citizenship and Immigration Services~~Immigration and Naturalization Service is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.

(e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.

(8) (a) A person may be issued a personal identification card if the person currently holds a valid Kentucky instruction permit or operator's license. If a person's

instruction permit or operator's license has been suspended or revoked, the person may be issued a temporary personal identification card. A temporary personal identification shall be renewed annually and may be surrendered when the person applies to have his or her instruction permit or operator's license reinstated.

(b) Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a released felony offender resides shall issue to any felony offender, if the felony offender is eligible, released from the Department of Corrections on home incarceration, parole, completed service of sentence, shock probation, or pardon, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:

- 1. The offender's certificate of birth;**
- 2. A copy of the offender's resident record card and parole certificate or notice of discharge;**
- 3. A photograph of the offender, printed on plastic card or paper; and**
- 4. A release letter that shall contain the offender's:**
 - a. Full legal name, subject to the information available to the Department of Corrections;**
 - b. Discharge/release date;**
 - c. Signature;**
 - d. Social Security number;**
 - e. Date of birth;**
 - f. Present Kentucky address where he or she resides; and**
 - g. Physical description.**

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the release letter and shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after July 15, 2010.

(c) Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a felony offender resides shall issue to any felony offender, if the felony offender is eligible, probated or conditionally discharged by the court and under the supervision of the Division of Probation and Parole, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:

- 1. The offender's certificate of birth;**
- 2. The offender's sentencing order;**
- 3. A photograph of the offender, printed on plastic card or paper; and**
- 4. A notarized release letter, signed by the supervising officer verifying the offender's status on supervision, that shall contain the offender's:**
 - a. Full legal name, subject to the information available to the Division of Probation and Parole;**
 - b. Signature;**
 - c. Social Security number;**

- d. Date of birth;
- e. Present Kentucky address where he or she resides; and
- f. Physical description.

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the notarized release letter. The offender shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after July 15, 2010.

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HOUSE BILL 500 – Sexual Assault Examinations

Section 1. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician, ~~or~~ a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, **or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707,** is available on call twenty-four (24) hours each day for the examinations of persons **seeking treatment as** ~~reported to any law enforcement agency to be~~ victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064(1)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician, ~~or~~ sexual assault nurse examiner, **or other qualified medical professional,** acting under a statewide medical **forensic** protocol which shall be developed by the **Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707** ~~chief medical examiner~~, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the ~~reported~~ victim, or upon the request of the ~~reported~~ victim, examine such person for the **purposes** ~~purpose~~ of **providing basic medical care relating to the incident and** gathering **samples that may be used as** physical evidence. This examination shall include but not be limited to:
 - (a) Basic treatment and **sample** ~~evidence~~ gathering services; and
 - (b) Laboratory tests, as appropriate.
- (5) Each ~~reported~~ victim shall be informed of available services for treatment of **sexually transmitted infections** ~~venereal disease~~, pregnancy, and other medical and

psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.

(6) Each~~reported~~ victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.

(7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

(8) (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.

(b) Upon receipt of a completed~~original~~ claim form supplied by the board and itemized billing for a forensic sexual assault examination **or related services within the scope of practice of the respective provider**, the board shall reimburse the hospital or sexual assault examination facility, **pharmacist, health department,**~~and the~~ physician,~~or~~ sexual assault nurse examiner, **or other qualified medical professional** as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.

(c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.

(9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, **the pharmacist, the health department,** the sexual assault nurse examiner, **other qualified medical professional**, the victim's insurance carrier, or the Commonwealth.

(10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child, spouse, and other vulnerable adult is required, as set forth in KRS 209.030, 209A.030, and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.

(b) 1. All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.

2. Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.

3. All samples collected pursuant to this section shall be stored for at least ninety (90) days from the date of collection in accordance with the

administrative regulation promulgated pursuant to this subsection.

4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within ninety (90) days after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

Section 2. KRS 314.011 is amended to read as follows:

As used in this chapter, unless the context thereof requires otherwise:

(14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee~~[Office of the Kentucky State Medical Examiner]~~ pursuant to KRS 216B.400(4);

Section 3. KRS 403.707 is amended to read as follows:

* * * * *

(5) The Sexual Assault Response Team Advisory Committee shall:

(a) Serve in an advisory capacity to the Kentucky Board of Nursing in accomplishing the duties set forth under KRS 314.142;

(b) Serve in an advisory capacity to the Justice and Public Safety Cabinet~~[chief medical examiner]~~ in the development of the statewide sexual assault protocol required under KRS 216B.400(4);

(c) Develop a model protocol for the operation of sexual assault response teams which shall include the roles of sexual assault nurse examiners, physicians, law enforcement, prosecutors, and victim advocates;

(d) Provide information and recommendations concerning the activities of the agency or organization represented by each individual committee member as related to sexual assault issues and programs within the purview of the agency or organization; and

(e) Recommend to the Council on Domestic Violence and Sexual Assault any changes in statute, administrative regulation, training, policy, and budget to promote a multidisciplinary response to sexual assault.